Next scheduled Committee Meeting will be held in the Multi-Purpose Room, 201 Spring Street, Springdale, Arkansas

- The next Committee meeting Monday, November 18, 2019
  - Committee agendas will be available on Friday, November 15.

#### SPRINGDALE CITY COUNCIL REGULAR MEETING TUESDAY, November 12<sup>th</sup>, 2019

5:55 p.m. Pre Meeting Activities

Pledge of Allegiance Invocation – Colby Fulfer

#### 6:00 p.m. OFFICIAL AGENDA

- 1. Large Print agendas are available.
- 2. Call to Order Mayor Doug Sprouse
- 3. Roll Call Denise Pearce, City Clerk

Recognition of a Quorum.

4. Comments from Citizens

The Council will hear brief comments from citizens during this period on issues not on the Agenda. No action will be taken tonight. All comments will be taken under advisement.

- Allyn Lord will report on awards received by Shiloh Museum. Pg. 3
- 6. Approval of Minutes October 22<sup>th</sup>, 2019 Pgs. 4 20
- 7. Procedural Motions
  - A. Entertain Motion to read all Ordinances and Resolutions by title only.

Entertain Motion to dispense with the rule requiring that ordinances be fully and distinctly read on three (3) different days for ordinances listed on this agenda as *item numbers* **9A-B, 10, 11D, 13** *Motion must be approved by two-thirds (2/3) of the council members).* 

- 8. A public hearing on a proposed ordinance establishing sanitary sewer rates in the City of Springdale, Arkansas.
- 9. Health, Sanitation and Property Maintenance Committee by Chairman Brian Powell:
  - A. <u>An Ordinance</u> repealing Ordinance No. 4950; Establishing Sewer Rates to be charged by the City of Springdale; and for other purposes. Pgs. 21 23
  - B. <u>An Ordinance</u> repealing Ordinance No. 4951; Establishing Water Rates to be charged by the City of Springdale; and for other purposes. Pgs. 24 25
- 10. Planning Commission Report and Recommendation by Patsy Christie, Director of Planning and Community Development:

<u>An Ordinance</u> accepting a new addition to the City of Springdale, Arkansas to be known as (Summer View Subdivision), a subdivision to the City of Springdale, Arkansas, and <u>declaring</u> an emergency. This addition includes a portion of Julio Road Right-of-Way on the North side and a portion of Butterfield Coach Right-of-Way on the East side, containing 11.5 acres, more or less. <u>Pgs. 26 - 28</u>

- 11. Police and Fire Committee by Chairman Amelia Williams:
  - A. <u>A Resolution</u> authorizing the execution of a contract for Architect Services for Fire Station No. 9 located at 7561 W. Downum Road, Project 18BPF3. Pgs. 29 60
  - B. <u>A Resolution</u> authorizing the execution of a Construction Manager Contract for Springdale Fire Station No. 9. Pgs. 61 79

- C. <u>A Resolution</u> authorizing the purchase of the property at 903 Joye Street to expand Fire Station No 4. Committee forwarded with no recommendation. Pgs. 80 94
- D. **An Ordinance** to waive competitive bidding for the purchase of Extrication Equipment for the Fire Department. Pgs. 95 97
- 12. Street and Capital Improvements Committee by Chairman Rick Evans:
  - A. <u>A Resolution</u> authorizing the renovation of four (4) bathrooms in the Springdale Public Library. Pgs. 98 99
  - B. <u>A Resolution</u> authorizing the execution of an Engineering Services Contract Amendment for design of an extension of the Spring Creek Trail. Pgs. 100 110
  - C. <u>A Resolution</u> authorizing the execution of a Construction Observation Services Contract for the Maple Avenue Extension Project (18BPS2). Pgs. 111 115.
  - D. <u>A Resolution</u> expressing the willingness of the City of Springdale to utilize Federal Funding for the Dean's Trail Phase 3 Project. <u>Pgs. 116 124</u>
- 13. <u>An Ordinance</u> authorizing the City Clerk to file a clean-up lien for the removal of overgrown brush and debris on property located within the City of Springdale, Arkansas. The property is located at 2507 Toni, Washington County, Parcel No. 815-23735-000. Pgs. 125 133
- 14. Comments from Council Members.
- 15. Comments from City Attorney.
- 16. Comments from Mayor.
- 17. Adjournment.

Our next 2020 Budget Work Session will be Wednesday, November 13 in the Multi-Purpose Room.

#### **Beth Parnell**

From:

Rose Lawrence <rlawrence@springdalear.gov>

Sent:

Tuesday, October 22, 2019 1:04 PM

То:

'Beth Parnell'

Subject:

Council agenda

Beth, would you put this on the Nov 12<sup>th</sup> Council meeting at the beginning where all the presentations go?

Thanks, Rose

From: Allyn Lord [mailto:alord@springdalear.gov]

Sent: Tuesday, October 22, 2019 1:00 PM

To: Rose Lawrence

Subject: RE: Council agenda

Here are the two awards, both from the Southeastern Museums Conference (our regional museums conference):

- Emerging Museum Professional award: Kimberly Hosey, Shiloh Museum education specialist
- Bronze Award in Exhibits: Shiloh Museum exhibit hall renovation, 2014-2018

You don't have to put all that down unless it's standard practice. I'll say just a few words about each award that night.

Thanks!

From: Rose Lawrence [mailto:rlawrence@springdalear.gov]

Sent: Tuesday, October 22, 2019 12:39 PM

To: Allyn Lord

Subject: RE: Council agenda

Yes, do you want us to put something about them, the name, etc?

From: Allyn Lord [mailto:alord@springdalear.gov]

Sent: Tuesday, October 22, 2019 12:16 PM

**To:** 'Rose Lawrence' **Subject:** Council agenda

Rose:

Could I have a few minutes on the next City Council agenda (I believe that would be Nov. 12) to acknowledge two awards received by the Museum this week?

Allyn

(Ms) Allyn Lord Director Shiloh Museum of Ozark History 118 W. Johnson Ave. Springdale, AR 72764-4313

#### SPRINGDALE CITY COUNCIL. OCTOBER 22, 2019

The City Council of the City of Springdale met in regular session on Tuesday, October 22, 2019, in the City Council Chambers, City Administration Building. Mayor Doug Sprouse called the meeting to order at 6:00 p.m.

Roll call was answered by:

Doug Sprouse Mayor Amelia Williams Ward 3 Jeff Watson Ward 3 Mike Overton Ward 2 Colby Fulfer Ward 1 Mike Lawson

Ward 4 (Absent)

Rick Evans Ward 2 Brian Powell Ward 1 Kathy Jaycox Ward 4 Ernest Cate City Attorney

Denise Pearce City Clerk/Treasurer

#### Department heads present:

Mike Irwin Fire Chief Mike Peters Police Chief Wyman Morgan Director of Financial Services Patsy Christie Planning & Comm. Dev. Director Mike Chamlee **Buildings Director** Brad Baldwin Eng. & Public Works Director Ron Findley Neighborhood Services Director Ashley Earhart Public Relations Director Gina Lewis

Human Resources Director Chad Wolf Parks & Recreation Director

#### CITIZEN COMMENTS

Tim Hiedleman, Camelot Subdivision resident, expressed concern with the new Shaw Ballpark and the residential development going in on Ball Street causing drainage problems in his subdivision. He asked that the City of Springdale protect the citizens in this area and in Elm Springs as far as the drainage flow.

#### REPORT ON ECONOMIC DEVELOPMENT

Scott Edmondson, Director of Business Development with the Springdale Chamber of Commerce, gave a 3rd Quarter 2019 report on economic development in the City of Springdale. (Report on file in City Clerk's Office)

### FINAL NEEDS ASSESSMENT PRESENTATION FOR PARKS AND RECREATION

Stephen Dittmore, University of Arkansas Research Team, was present at Council to present final needs assessment for the Parks and Recreation Department. The purpose of the study was to assess the future direction of the Springdale Parks and Recreation.

Public meetings were held on June 3, 2019 and June 5, 2019. There was a focus group with select area organizations engaged in recreation and sports programs. They also met with Parks and Recreation staff, developed online surveys for interests from public meetings and did some general research into youth sports programming.

Dr. Dittmore's team presented focus group results. Some of the results included:

- Need programming coordinator position
- Transportation is the largest barrier

### SPRINGDALE CITY COUNCIL OCTOBER 22, 2019

- Improved communication with schools
- A community recreation board to be created
- A strategic plan needs to be developed
- There is a wide variety of facilities "best in the area"!!!

#### Recommendations:

- 1. Complete a strategic plan
- 2. Identify locations for additional parks
- 3. Levy an HMR tax with the A & P Commission
- 4. Create a board of community programmers
- 5. Organize school district meetings
- 6. Evaluate organizations of sports programs
- 7. Identify sports associations interested in taking over programs
- 8. Complete renovation of
  - Recreation Center
  - Shaw Park
- 9. Continue sports academics
- 10. Increase non-sports programs
- 11. Add splash pads to parks

Tonight's presentation will be on the City of Springdale's website for citizens to view.

#### **APPROVAL OF MINUTES**

Council Member Evans moved the minutes of the October 8, 2019 City Council meeting be approved as presented. Council Member Jaycox made the second.

There was a voice vote of all ayes and no nays.

### ORDINANCES AND RESOLUTIONS READ BY TITLE ONLY

Council Member Williams made the motion to read all Ordinances and Resolutions by title only and to dispense with the rule requiring that ordinances be fully and distinctly read on three (3) different days for all items listed on this agenda. Council Member Jaycox made the second.

The vote:

Yes: Powell, Jaycox, Williams, Watson, Overton, Fulfer, Evans

No: None

# ORDINANCE NO. 5424 – REZONING 1.6 ACRES OWNED BY RALPH M. AND ESTELLA E. RODGERS REVOCABLE TRUST LOCATED ON S. 48<sup>TH</sup> STREET (PARCEL #815-29106-110), FROM O-1 TO C-4

Planning Director Patsy Christie presented an Ordinance rezoning 1.6 acres owned by Ralph M. and Estella E. Rodgers Revocable Trust, located on S. 48<sup>th</sup> Street (Parcel #815-29106-110), from O-1 to C-4; declaring an emergency and for other purposes.

Planning Commission recommended approval at their October 1, 2019 meeting.

After reading the title of the Ordinance, Council Member Evans moved the Ordinance "Do Pass". Council Member Jaycox made the second.

The vote:

### SPRINGDALE CITY COUNCIL OCTOBER 22, 2019

Yes: Jaycox, Williams, Watson, Overton, Fulfer, Evans, Powell

No: None

Council Member Evans moved the Emergency Clause be adopted. Council Member Jaycox made the second.

The vote:

Yes: Williams, Watson, Overton, Fulfer, Evans, Powell, Jaycox

No: None

The Ordinance was numbered 5424.

# ORDINANCE NO. 5425 – REZONING 14 ACRES OWNED BY ANNE ALLENE HOLLINGSWORTH REVOCABLE TRUST LOCATED AT THE INTERSECTION OF HIGHWAY 112 AND HAR-BER AVENUE, FROM A-1 TO R-E

Planning Director Patsy Christie presented an Ordinance rezoning 14 acres owned by Anne Allene Hollingsworth Revocable Trust located at the intersection of Highway 112 and Har-Ber Avenue, from A-1 to R-E; declaring an emergency and for other purposes.

Planning Commission recommended approval at their October 1, 2019 meeting.

After reading the title of the Ordinance, Council Member Jaycox moved the Ordinance "Do Pass". Council Member Williams made the second.

The vote:

Yes: Watson, Overton, Fulfer, Evans, Powell, Jaycox, Williams

No: None

Council Member Evans moved the Emergency Clause be adopted. Council Member Jaycox made the second.

The vote:

Yes: Overton, Fulfer, Evans, Powell, Jaycox, Williams, Watson

No: None

The Ordinance was numbered 5425.

# ORDINANCE NO. 5426 – REZONING 20.1 ACRES OWNED BY JOHN L. AND PAMELA K. GAY FAMILY TRUST LOCATED SOUTH OF JULIO ROAD, WEST OF BUTTERFIELD COACH, NORTH OF TYSON HEIGHTS PHASE I SUBDIVISION, SOUTHWEST OF SONOMA SUBDIVISION, FROM SF-2 TO SF-3

Planning Director Patsy Christie presented an Ordinance rezoning 20.1 acres owned by John L. and Pamela K. Gay Family Trust located south of Julio Road, west of Butterfield Coach, north of Tyson Heights Phase I Subdivision, and southwest of Sonoma Subdivision, from SF-2 to SF-3; declaring an emergency and for other purposes.

Planning Commission recommended approval at their October 1, 2019 meeting.

After reading the title of the Ordinance, Council Member Powell moved the Ordinance "Do Pass". Council Member Williams made the second.

### SPRINGDALE CITY COUNCIL OCTOBER 22, 2019

The vote:

Yes: Fulfer, Evans, Powell, Jaycox, Williams, Watson, Overton

No: None

Council Member Evans moved the Emergency Clause be adopted. Council Member Jaycox made the second.

The vote:

Yes: Evans, Powell, Jaycox, Williams, Watson, Overton, Fulfer

No: None

The Ordinance was numbered 5426.

# ORDINANCE NO. 5427 – REZONING 6.5 ACRES OWNED BY BUTTERFIELD DEVELOPMENT GROUP LLC LOCATED ON BUTTERFIELD COACH ROAD, FROM C-5 TO MF-24

Planning Director Patsy Christie presented an Ordinance rezoning 6.5 acres owned by Butterfield Coach Road, from C-5 to MF-24; declaring an emergency and for other purposes.

Planning Commission recommended approval at their October 1, 2019 meeting.

After reading the title of the Ordinance, Council Member Evans moved the Ordinance "Do Pass". Council Member Powell made the second.

The vote:

Yes: Powell, Jaycox, Williams, Watson, Overton, Fulfer, Evans

No: None

Council Member Evans moved the Emergency Clause be adopted. Council Member Jaycox made the second.

The vote:

Yes: Jaycox, Williams, Watson, Overton, Fulfer, Evans, Powell

No: None

The Ordinance was numbered 5427.

## RESOLUTION NO. 101-19 – APPROVING A CONDITIONAL USE APPEAL BY MANUELA MARTINEZ FOR A HOME OCCUPATION AT 3084 GREENWICH STREET

Planning Director Patsy Christie presented a Resolution approving a conditional use appeal by Manuela Martinez for a Use Unit 28 (Home Occupation - Embroidery Operation) at 3084 Greenwich Street as set forth in Ordinance No. 4030.

RESOLUTION NO.

A RESOLUTION APPROVING A CONDITIONAL USE AT 3084 GREENWICH STREET AS SET FORTH IN ORDINANCE NO. 4030

WHEREAS, Ordinance #4030 amending Chapter 130 (Zoning Ordinance) of the Springdale Code of Ordinance provides that an application for a conditional use on appeal must be heard first by the Planning Commission and a recommendation made to the City Council; and

WHEREAS, the Planning Commission held a public hearing on October 1, 2019 on a request by Manuela Martinez for a conditional use for a Use Unit 28 (Home Occupation) in a Low/Medium Density Single Family Residential District (SF-2) at 3084 Greenwich Street; and

WHEREAS, following the public hearing the Planning Commission by a vote of eight (8) yes and zero (0) no recommends that a conditional use be granted to Manuela Martinez for a Use Unit 28 (Home Occupation) in a Low/Medium Density Single Family Residential District (SF-2) at 3084 Greenwich Street with the following conditions –

- 1. No alteration of the outside appearance of the residential structure or provision of a separate outside entrance for the business areas of the residential structure
- 2. No outside storage of materials required for the operation of the business
- 3. Operated only by the resident members of the household and shall not have any employees, concessionaires or any other form of operator or helper whether such business is conducted on the premises or off the premises.
- 4. Requires the use of an area no greater than thirty (30) percent of the total heated living space of the residential structure.
- 5. Generates no traffic, parking, and sewage or water use in excess of what is normal in the residential neighborhood.
- 6. Will not produce any fumes, odors, noise or any other offensive effects that are not normal to residential activity.
- 7. Will not involve accessory buildings.
- 8. Stock in trade shall not exceed ten (10) percent of the floor area of the accessory use.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE, that the City Council hereby grants a conditional use to Manuela Martinez for a Use Unit 28 (Home Occupation) in a Low/Medium Density Single Family Residential District (SF-2) at 3084 Greenwich Street with the following conditions –

- 1. No alteration of the outside appearance of the residential structure or provision of a separate outside entrance for the business areas of the residential structure
- 2. No outside storage of materials required for the operation of the business
- 3. Operated only by the resident members of the household and shall not have any employees, concessionaires or any other form of operator or helper whether such business is conducted on the premises or off the premises.
- 4. Requires the use of an area no greater than thirty (30) percent of the total heated living space of the residential structure.

- 5. Generates no traffic, parking, and sewage or water use in excess of what is normal in the residential neighborhood.
- Will not produce any fumes, odors, noise or any other offensive effects that **6.** are not normal to residential activity.
- 7. Will not involve accessory buildings.
- 8. Stock in trade shall not exceed ten (10) percent of the floor area of the accessory use.

PASSED AND APPROVED THI	S DAY OF October, 2019.
	Doug Sprouse, Mayor
ATTEST:	
Denise Pearce, City Clerk	
APPROVED AS TO FORM:	
Ernest Cate, City Attorney	

Council Member Jaycox moved the Resolution be adopted. Council Member Evans made the second.

The vote:

Yes: Williams, Watson, Overton, Fulfer, Evans, Powell, Jaycox

No: None

The Resolution was numbered 101-19.

RESOLUTION NO. 102-19 - APPROVING A WAIVER OF STREET IMPROVEMENTS, DRAINAGE, CURBS, GUTTERS AND SIDEWALKS AS SET FORTH IN ORDINANCE NO. 3725 TO MARCYE KINNARD IN CONNECTION WITH 8159 E. BROWN ROAD, A SINGLE FAMILY DWELLING

Planning Director Patsy Christie presented a Resolution approving a waiver of street improvements, drainage, curbs, gutters and sidewalks by Marcye Kinnard in connection with 8159 E. Brown Road, a single family dwelling.

Council Member Evans moved the Resolution be adopted with Option 1. Council Member Jaycox made the second.

#### RESOLUTION NO. \_\_\_

A RESOLUTION APPROVING A WAIVER OF STREET IMPROVEMENTS, DRAINAGE, CURBS, GUTTERS SIDEWALKS AS SET FORTH IN ORDINANCE NO. 3725 TO MARCYE KINNARD IN CONNECTION WITH 8159 E. BROWN ROAD, A SINGLE FAMILY DWELLING

WHEREAS, Ordinance #3047 provides for the waiver of street improvements, drainage relating thereto, curbs, gutters and sidewalks to be first heard by the Planning Commission and a recommendation made to the City Council, with any waivers to be granted by the City Council only; and

WHEREAS, the Planning Commission reviewed a request for waiver of street improvements to E. Brown Road including drainage improvements related thereto, sidewalks in connection with 8159 E. Brown a single family dwelling for Marcye Kinnard and the Planning Commission recommends approval of the waiver request.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE, that the City Council hereby:

**Option 1:** Grants a waiver of street improvements to Marcye Kinnard including drainage improvements related thereto, sidewalks in connection with 8159 E. Brown Road, a single family dwelling.

	PASSED AND APPROVED THIS	DAY OF OCTOBER, 2019.
		Doug Sprouse, Mayor
ATTE	ST:	
Denis	e Pearce, City Clerk	
APPR	OVED AS TO FORM:	
Ernest	Cate, City Attorney	
The vo	ote:	
Yes:	Watson, Overton, Fulfer, Evans, Pow	ell, Jaycox, Williams
No:	None	

The Resolution was numbered <u>102-19</u>.

RESOLUTION NO. 103-19 – APPROVING A WAIVER OF STREET IMPROVEMENTS, DRAINAGE, CURBS, GUTTERS AND SIDEWALKS AS SET FORTH IN ORDINANCE NO. 3725 TO GRIFFIN 4-PLEX ON NORTH GUTENSOHN ROAD IN CONNECTION WITH N19-23 A NON LARGE SCALE DEVELOPMENT

Planning Director Patsy Christie presented a Resolution approving a waiver of street improvements, drainage, curbs, gutters and sidewalks as set forth in Ordinance No. 3725 to Griffin 4-Plex on North Gutensohn Road in connection with N19-23, a non-large scale development.

Council Member Jaycox moved the Resolution be adopted with Option 1. Council Member Evans made the second.

#### RESOLUTION NO. \_\_\_\_

A RESOLUTION APPROVING A WAIVER OF STREET IMPROVEMENTS, DRAINAGE, CURBS, GUTTERS AND SIDEWALKS AS SET FORTH IN ORDINANCE NO. 3725 TO GRIFFIN 4-PLEX IN CONNECTION WITH N19-23 A NON LARGE SCALE DEVELOPMENT

WHEREAS, Ordinance #3047 provides for the waiver of street improvements, drainage relating thereto, curbs, gutters and sidewalks to be first heard by the Planning Commission and a recommendation made to the City Council, with any waivers to be granted by the City Council only; and

WHEREAS, the Planning Commission reviewed a request for waiver of street improvements to Gutensohn including drainage improvements related thereto, curbs, gutters, sidewalks and street lights in connection with N19-23 a Non-Large Scale Development for Griffin 4-plex and the Planning Commission recommends approval of the waiver request.

## NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE, that the City Council hereby:

**Option 1: Grants** a waiver of street improvements to Griffin 4-plex including drainage improvements related thereto, curbs, gutters, sidewalks and street lights in connection with N19-07 a Non-Large Scale Development.

PASSED AND APPROVED THIS DAY OF OCTOBER, 2019.		
Doug Spr	rouse, Mayor	
ATTEST:		
Denise Pearce, City Clerk		
APPROVED AS TO FORM:		
Ernest Cate, City Attorney		
The vote:		
Yes: Overton, Fulfer, Evans, Powell, Jaycox, Williams, Wat	tson	
No: None		
The Resolution was numbered 103-19.		

RESOLUTION NO. 104-19 — APPROVING A CONDITIONAL USE APPEAL BY JOSHUA AND BOBBI LAWSON FOR A TANDEM LOT SPLIT AT 3362 NORTH 48<sup>TH</sup> STREET

Planning Director Patsy Christie presented a Resolution approving a conditional use appeal by Joshua and Bobbi Lawson for a tandem lot split at 3362 North 48<sup>th</sup> Street as set forth in Ordinance No. 4030.

#### RESOLUTION NO. \_\_\_\_

## A RESOLUTION APPROVING A CONDITIONAL USE AT 3362 NORTH 48<sup>TH</sup> STREET AS SET FORTH IN ORDINANCE NO. 4030

WHEREAS, Ordinance #4030 amending Chapter 130 (Zoning Ordinance) of the Springdale Code of Ordinance provides that an application for a conditional use on appeal must be heard first by the Planning Commission and a recommendation made to the City Council; and

**WHEREAS,** the Planning Commission held a public hearing on October 1, 2019 on a request by Joshua & Bobbi Lawson for a conditional use for a Tandem Lot Split in an Agricultural District (A-1) at 3362 North 48<sup>th</sup> Street; and

WHEREAS, following the public hearing the Planning Commission by a vote of eight (8) yes and zero (0) no recommends that a conditional use be granted to Joshua and

Bobbi Lawson for a Tandem Lot Split in an Agricultural District (A-1) at 3362 North 48<sup>th</sup> Street with the following conditions – No conditions set.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE, that the City Council hereby grants a conditional use to Joshua and Bobbi Lawson for a Tandem Lot Split in an Agricultural District (A-1) at 3362 North 48<sup>th</sup> Street with the following conditions – No conditions set.

	PASSED AND APPROVED THIS DAY OF OCTOBER, 2019.
	Doug Sprouse, Mayor
ATTI	EST:
Denis	se Pearce, City Clerk
APPF	ROVED AS TO FORM:
Ernes	t Cate, City Attorney
Coun	cil Member Jaycox moved the Resolution be adopted. Council Member Evans the second.
The v	ote:
Yes:	Fulfer, Evans, Powell, Jaycox, Williams, Watson, Overton
No:	None
The R	esolution was numbered 104-19.
CONS	DLUTION NO. 105-19 – AUTHORIZING THE EXECUTION OF A STRUCTION MANAGER CONTRACT WITH COMMERCE CONSTRUCTION PANY FOR PARKS AND RECREATION CENTER REMODEL, PROJECT NO.

Wyman Morgan presented a Resolution authorizing the execution of a construction manager contract with for the Parks and Recreation Center Remodel Project, CP1904.

#### RESOLUTION NO. \_\_\_\_

A RESOLUTION AUTHORIZING THE EXECUTION OF A CONSTRUCTION MANAGER CONTRACT FOR PARKS & RECREATION CENTER REMODEL PROJECT NO. CP 1904

WHEREAS, Arkansas Statute 19-11-801 provides for the employment of a construction manager for public improvement projects, and

WHEREAS, Commerce Construction Company (CCC) has been recommended by the Mayor to serve as construction manager for the remodel of the Parks & Recreation Center; and

WHEREAS, CCC has agreed to furnish preconstruction services at no charge (unless the project is cancelled then the city will owe \$10,000) and construction services for 6% of construction costs.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the Mayor is hereby authorized to execute a contract for construction manager services with Commerce Construction

Company for services to be provided relating to the remodel of the Parks & Recreation Center.

PASSED AND APPROVED this	day of October, 2019.
	Doug Sprouse, Mayor
ATTEST:	
Denise Pearce, City Clerk	
APPROVED AS TO FORM:	
Ernest B. Cate, City Attorney	
Council Member Jaycox moved the Resolution made the second.	on be adopted. Council Member Fulfer
The vote:	
T	

Yes: Evans, Powell, Jaycox, Williams, Watson, Overton, Fulfer

No: None

The Resolution was numbered 105-19.

RESOLUTION NO. 106-19 – AUTHORIZING THE PURCHASE OF PROPERTY OWNED BY DAVID MORAN LOCATED AT 418 SPRING STREET, SPRINGDALE, WASHINGTON COUNTY, ARKANSAS

Council Member Jeff Watson presented a Resolution authorizing the purchase of property owned by David Moran located at 418 Spring Street, Springdale, Washington County, Arkansas. This purchase will be part of the City Hall expansion project.

#### RESOLUTION NO. \_\_\_\_

A RESOLUTION AUTHORIZING THE PURCHASE OF PROPERTY LOCATED AT 418 SPRING STREET, SPRINGDALE, WASHINGTON COUNTY, ARKANSAS.

WHEREAS, David B. Moran currently owns property located at 418 Spring Street, Springdale, Washington County, Arkansas, Parcel Number 815-22923-000, ("the Property"), and more particularly described as follows:

STARTING AT THE SOUTHEAST CORNER OF LOT NUMBERED ONE (1) IN BLOCK NUMBERED TWO (2) OF HOLCOMB'S ADDITION TO THE TOWN (NOW CITY) OF SPRINGDALE, AND RUNNING, NORTH ALONG THE WEST SIDE OF SPRING STREET ONE HUNDRED TWENTY FIVE (125) FEET FOR A BEGINNING CORNER, THENCE RUNNING WEST ONE HUNDRED SEVENTY ONE (171) FEET, THENCE NORTH FIFTY (50) FEET, THENCE EAST ONE HUNDRED SEVENTY ONE (171) FEET TO THE WEST LINE OF SPRING STREET; THENCE SOUTH FIFTY (50) FEET TO THE BEGINNING.

WHEREAS, the owner has agreed to sell the Property to the City of Springdale for the total sum of \$84,000.00, said amount being based on the owner's appraisal, and is only \$4,000.00 more than the appraisal conducted by the City on the Property.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS that the Mayor is hereby authorized to execute all documents necessary for the acquisition of the Property in the amount of

\$84,000.00, plus associated closing costs, to be paid from the proceeds of the sale of the City's properties on Spring Street through the Capital Improvement Program Fund.

PASSED AND APPROVED this _	day of October, 2019.
	Doug Sprouse, Mayor
ATTEST:	
Denise Pearce, City Clerk	¢
APPROVED AS TO FORM:	
Ernest B. Cate, City Attorney	-
Council Member Jaycox moved the Resomade the second.	olution be adopted. Council Member Evans
The vote:	
Yes: Powell, Jaycox, Williams, Watson, O	Overton, Fulfer, Evans
No: None	

The Resolution was numbered <u>106-19</u>.

RESOLUTION NO. 107-19 – SETTING A PUBLIC HEARING DATE, PURSUANT TO ARKANSAS CODE ANNOTATED \$14-235-223, ON A PROPOSED ORDINANCE ESTABLISHING AND SETTING RATES FOR SANITARY SEWER SERVICE IN THE CITY OF SPRINGDALE, ARKANSAS

Council Member Brian Powell presented a Resolution setting a public hearing date for November 12, 2019, pursuant to Arkansas Code Annotated §14-235-223, on a proposed ordinance establishing and setting rates for sanitary sewer service in the City of Springdale, Arkansas.

#### RESOLUTION NO. \_\_\_\_

A RESOLUTION SETTING A PUBLIC HEARING DATE, PURSUANT TO ARK. CODE ANN. §14-235-223, ON A PROPOSED ORDINANCE ESTABLISHING AND SETTING RATES FOR SANITARY SEWER SERVICE IN THE CITY OF SPRINGDALE, ARKANSAS.

WHEREAS, the City of Springdale, Arkansas, has found it necessary to consider an increase in sanitary sewer rates in order to maintain the operation and maintenance of wastewater facilities, and to provide the revenue required for future expansion and improvements to the city's wastewater facilities;

WHEREAS, attached hereto as Exhibit "A" and incorporated herein by reference is a proposed ordinance, entitled "An Ordinance Establishing and Setting Rates for Sanitary Sewer Service; Repealing Ordinance 4950, and Pertaining to Other Matters Relating Thereto" ("the Ordinance"), which is hereby introduced for consideration by the City Council for the City of Springdale, Arkansas;

WHEREAS, Ark. Code Ann. §14-235-223 provides that no sewer rates or charges shall be established until after a public hearing, at which all the users of the

works and owners of property served or to be served by them and others interested shall have opportunity to be heard concerning the proposed sewer rates or changes; and

WHEREAS, Ark. Code Ann. §14-235-223 provides that after the introduction of the Ordinance, and before the enactment of the Ordinance, that notice of the public hearing, setting forth the proposed schedule of the rates or charges, shall be given by one (1) publication in a newspaper published in or having general circulation in the municipality at least ten (10) days before the date fixed for the public hearing.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that November 12, 2019, at 6:00 p.m. be set as the date and time for the City Council to hold a public hearing on the Ordinance; that the City Clerk shall give notice of the date and time of the public hearing as required by Ark. Code Ann. §14-235-223; and such notice shall also contain the proposed schedule of the rates or charges contained in the Ordinance.

PASSED AND APPROVED this _	day of October, 2019.
	Doug Sprouse, Mayor
ATTEST:	
Denise Pearce, CITY CLERK	
APPROVED AS TO FORM:	2
Ernest B. Cate, CITY ATTORNEY	
Council Member Evans moved the Resol- made the second.	ution be adopted. Council Member Jaycox
The vote:	
Yes: Jaycox, Williams, Watson, Overton,	Fulfer, Evans, Powell
No: None	
The Resolution was numbered <u>107-19</u> .	
RESOLUTION NO. 108-19 – AUTHORIZI CONDEMNATION LAWSUIT WHEREI	NG THE CITY ATTORNEY TO SETTLE A N ERIC R. CULLINS AND NANCY V.

AVENUE AND 400 ROBERT CIRCLE

Council Member Rick Evans presented a Resolution authorizing the City Attorney to settle a condemnation lawsuit wherein Eric R. Cullins and Nancy V. Cullins, Trustees of the Nancy V. Baur Living Trust are defendants. The easements are located at 303, 305,

309 East Maple Avenue and 400 Robert Circle.

CULLINS, TRUSTEES OF THE NANCY V. BAUR LIVING TRUST ARE DEFENDANTS — EASEMENTS LOCATED AT 303, 305, 309 EAST MAPLE

#### RESOLUTION NO. \_\_\_\_

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO SETTLE A CONDEMNATION LAWSUIT WHEREIN ERIC R. CULLINS AND NANCY V. CULLINS, TRUSTEES OF THE NANCY V. BAUR LIVING TRUST ARE DEFENDANTS

WHEREAS, the City of Springdale has filed a lawsuit against Eric R. Cullins and Nancy V. Cullins, Trustees of the Nancy V. Baur Living Trust, to condemn easements

across four (4) tracts of land located at 303, 305, 309 East Maple Avenue, and 400 Robert Circle for the Maple Avenue Extension (Project 18BPS2);

WHEREAS, the City of Springdale deposited the sum of \$4,400.00 into the Registry of the Court as estimated just compensation for the easements across the subject properties;

WHEREAS, the property owners have provided an appraisal for the properties, and other supporting documentation, to support an offer to settle the condemnation lawsuit for the total sum of \$10,000.00;

WHEREAS, it is the recommendation of the City Attorney that the City Council approve the additional sum of \$5,600.00 to settle this lawsuit, as this amount is reasonable, is justified, and will avoid the cost, expense, and risk of a trial;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the City Attorney is hereby authorized to settle the Nancy V. Baur Living Trust condemnation lawsuit for the total sum of \$10,000.00, with the amount of \$5,600.00 to be paid from the 2018 Street Bond Program (Maple Avenue Extension, Project 18PBS2).

PASSED AND APPROVED this _	day of OCTOBER, 2019.
ATTEST:	Doug Sprouse, Mayor
Denise Pearce, CITY CLERK	
APPROVED AS TO FORM:	
Ernest B. Cate, CITY ATTORNEY	
Council Member Evans moved the Resolmade the second.	ution be adopted. Council Member Jaycox
The vote:	
Yes: Williams, Watson, Overton, Fulfer,	Evans, Powell, Jaycox
No: None	
The Resolution was numbered 108-19.	

RESOLUTION NO. 109-19 – AUTHORIZING THE EXECUTION OF A CONSTRUCTION CONTRACT FOR THE EXTENSION OF MAPLE AVENUE –

PROJECT NO. B18BPS2

Council Member Rick Evans presented a Resolution authorizing the execution of a construction contract for the extension of Maple Avenue, Project No. B18BPS2.

#### RESOLUTION NO. \_\_\_\_

A RESOLUTION AUTHORIZING THE EXECUTION OF A CONSTRUCTION CONTRACT FOR THE EXTENSION OF MAPLE AVENUE - PROJECT NO. B18BPS2

WHEREAS, sealed bids were received for the extension of Maple Avenue to Park Street, and

WHEREAS, Sweetser Construction, Inc. was the low bidder for this project at \$1,893,202.35.

## NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that

Section 1. The Mayor and City Clerk are hereby authorized to execute a contract with Sweetser Construction, Inc. for construction of an extension of Maple Avenue to Park Street for \$1,893,202.35.

**Section 2.** The Mayor is authorized to approve construction change orders as long as the cumulative total of the change orders does not exceed 10% of the original contract price.

PASSED AND APPROVED this	day of October, 2019.
	Doug Sprouse, Mayor
ATTEST:	
Denise Pearce, City Clerk	
APPROVED AS TO FORM:	
Ernest B. Cate, City Attorney	
Council Member Jaycox moved the Resolution made the second.	n be adopted. Council Member Powell
The vote:	
Yes: Watson, Overton, Fulfer, Evans, Powell,	Jaycox, Williams
No: None	
The Resolution was numbered <u>109-19</u> .	

RESOLUTION NO. 110-19 – AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A GRANT AGREEMENT WITH THE WALTON FAMILY FOUNDATION FOR THE CONSTRUCTION OF SPRING CREEK TRAIL EXTENSION FROM 40<sup>TH</sup> STREET TO I-49 ACROSS PROPERTY OWNED BY ARKANSAS GAME AND FISH

Planning Director Patsy Christie presented a Resolution authorizing the Mayor and City Clerk to enter into a grant agreement with the Walton Family Foundation for the construction of Spring Creek Trail Extension from 40<sup>th</sup> Street to I-49 across property owned by Arkansas Game and Fish.

#### RESOLUTION NO. \_\_\_\_

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A GRANT AGREEMENT WITH THE WALTON FAMILY FOUNDATION FOR THE CONSTRUCTION OF SPRING CREEK TRAIL EXTENSION ACROSS PROPERTY OWNED BY ARKANSAS GAME AND FISH

WHEREAS, the Walton Family Foundation has awarded a matching grant in the amount of \$760,000 to the City of Springdale for the construction of the extension of

Spring Creek Trail from 40<sup>th</sup> Street to I-49 on property owned by Arkansas Game and Fish; and

WHEREAS, Spring Creek Trail is a lighted trail/alternative transportation route along the Spring Creek beginning approximately one mile east of Lake Springdale Trailhead on the Razorback Regional Greenway at the location of the mountain bike trail Thunder Chicken; continuing to the west along Spring Creek to an at-grade crossing on 40<sup>th</sup> Street; then on property owned by the Arkansas Game and Fish being developed as a Nature Center; and

WHEREAS, the City's match (50/50) will consist of funds previously committed for design services out of the Public Works Department trail development budget and an approved Transportation Alternatives Program (TAP) grant for construction, with the remainder of funds to be provided in the Public Works Department trail development budget and any remainder through the Capital Improvement Program with allocation determined with the reward of a construction contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE, ARKANSAS, THAT: the Mayor is hereby authorized to accept grant funds from the Walton Family Foundation for the construction of the Spring Creek Trail Phase 2 and to enter into a grant agreement with matching funds set aside as outlined above to provide the required match for the grant.

PASSED AND APPROVED TH	IS DAY OF OCTOBER, 2019.
	Doug Sprouse, Mayor
ATTEST:	
Denise Pearce, City Clerk	
APPROVED:	
Ernest Cate, City Attorney	
Council Member Jaycox moved the Remade the second.	solution be adopted. Council Member Evans
The vote:	
Yes: Overton, Fulfer, Evans, Powell, Ja	ycox, Williams, Watson

No: None

The Resolution was numbered <u>110-19</u>.

RESOLUTION NO. 111-19 – AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A GRANT AGREEMENT WITH THE WALTON FAMILY FOUNDATION FOR THE CONSTRUCTION OF DEAN'S TRAIL

Planning Director Patsy Christie presented a Resolution authorizing the Mayor and City Clerk to enter into a grant agreement with the Walton Family Foundation for the construction of Dean's Trail.

RESOL	UTION	NO.	

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A GRANT AGREEMENT WITH THE WALTON FAMILY FOUNDATION FOR THE CONSTRUCTION OF DEAN'S TRAIL

WHEREAS, the Walton Family Foundation has awarded a matching grant in the amount of \$3,000,000 to the City of Springdale for the construction of the Dean's Trail Phase 2 and 3A; and

WHEREAS, Dean's Trail is a lighted trail/alternative transportation route along the east side of Springdale continuing the recently finished trial beginning at the Jones Center; crossing through the industrial area and the neighborhoods surrounding Parsons Hills Elementary School; terminating at the signaled crossing at Robinson Avenue at Oriole Street. Phase 2 and 3A will include a tunnel under Robinson Avenue connecting J. O. Kelley Middle School and Knapp Elementary School; continuing south to the existing tunnel under Don Tyson Parkway and terminating at the animal shelter site; and

WHEREAS, the City's match (50/50) will consist of funds previously committed for engineering and design of the trail and an approved Transportation Alternatives Program (TAP) grants with the remainder of funds to be provided in the Public Works Department trail development budget and any remainder through the Capital Improvement Program with allocation determined with the reward of a construction contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE, ARKANSAS, THAT: the Mayor is hereby authorized to accept grant funds from the Walton Family Foundation for the construction of the Phase 2 and 3A Dean's Trail and to enter into a grant agreement with matching funds set aside as outlined above to provide the required match for the grant.

PASSED AND APPROVED THIS	DAY OF OCTOBER, 2019.	
	Doug Sprouse, Mayor	
ATTEST:		
Denise Pearce, City Clerk		
APPROVED:		
Ernest Cate, City Attorney		
Council Member Jaycox moved the Resol made the second.	ution be adopted. Council Member Evans	
The vote:		
Yes: Fulfer, Evans, Powell, Jaycox, Willia	ms, Watson, Overton	

No:

None

The Resolution was numbered 111-19.

WITHDRAWN – PROPOSED ORDINANCE AUTHORIZING THE CITY CLERK TO FILE A CLEAN-UP LIEN FOR THE REMOVAL OF OVERGROWN BRUSH AND DEBRIS ON PROPERTY LOCATED AT 4051 BENJAMIN (PARCEL NO. 21-02340-000) BENTON COUNTY, WITHIN THE CITY OF SPRINGDALE, ARKANSAS

City Attorney Ernest Cate said this ordinance has been withdrawn because payment was received today.

ORDINANCE NO. 5428 – AUTHORIZING THE CITY CLERK TO FILE A CLEAN-UP LIEN FOR THE REMOVAL OF OVERGROWN BRUSH AND DEBRIS ON PROPERTY LOCATED AT 2688B CARONDOLET STREET (PARCEL NO. 815-35898-000) WASHINGTON COUNTY, WITHIN THE CITY OF SPRINGDALE, ARKANSAS, AND 1304 YOUNG STREET (PARCEL NO. 815-20890-000) WASHINGTON COUNTY, WITHIN THE CITY OF SPRINGDALE, ARKANSAS

City Attorney Ernest Cate presented an Ordinance authorizing the City Clerk to file a clean-up lien for the removal of overgrown brush and debris on property located at 2688B Carondolet Street (Parcel No. 815-35898-000) Washington County, within the City of Springdale, Arkansas, and 1304 Young Street (Parcel No. 815-20890-000) Washington County, within the City of Springdale, Arkansas.

After reading the title of the Ordinance, Council Member Evans moved the Ordinance "Do Pass". Council Member Jaycox made the second.

The vote:

Yes: Evans, Powell, Jaycox, Williams, Watson, Overton, Fulfer

No: None

Council Member Evans moved the Emergency Clause be adopted. Council Member Jaycox made the second.

The vote:

Yes: Powell, Jaycox, Williams, Watson, Overton, Fulfer, Evans

No: None

The Ordinance was numbered 5428.

#### **PUBLIC MEETING**

There will be a public meeting for the Har-Ber Avenue Extension from 48th Street to Gutensohn Road on October  $24^{th}$  at Central Junior High School from 5-7 p.m.

#### **ADJOURNMENT**

Council Member Evans made the motion to adjourn. Council Member Jaycox made the second.

After a voice vote of all ayes and no nays, the meeting adjourned at 7:35 p.m.

	Doug Sprouse, Mayor	
Denise Pearce, City Clerk/Treasurer	-	

ORDINANCE NO.	

AN ORDINANCE ESTABLISHING AND SETTING RATES FOR SANITARY SEWER SERVICE; REPEALING ORDINANCE 4950, AND PERTAINING TO OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Springdale has found it necessary to increase sanitary sewer rates in order to maintain the operation and maintenance of wastewater facilities and to provide the revenue required for future expansion and improvements to the city's wastewater facilities;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE, ARKANSAS:

SECTION 1: That Ordinance No. 4950 of the City of Springdale, Arkansas is hereby specifically repealed as of the effective date of the schedule herein established and that all other ordinances and parts of ordinances establishing schedules of rates for sanitary sewer supplied or to be supplied by Springdale Water Utilities are also repealed.

SECTION 2: That all customers whose premises are connected to and use the sanitary sewer system of the City of Springdale, or whose premises are in any way served by the Springdale sanitary sewer system are hereby classified as Domestic or Industrial Users. A Domestic User is defined as a user whose wastewater from residential property flows into and is treated by the Springdale sanitary sewer system. An Industrial User is defined as a user whose liquid waste from commercial, industrial, manufacturing, processing, trade or business, except domestic waste, that flows into and is treated by the Springdale sanitary sewer system.

SECTION 3: That the following schedule of rates are hereby established for sanitary sewer service furnished by the City of Springdale Water and Sewer Commission. The charges for all sewer collection and treatment shall be determined each month in accordance with Schedule (A) below. In addition, Industrial Users are subject to monthly surcharges for excessive Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS) as established in Schedule (B) below.

#### SCHEDULE A:

The following charges shall be based on water metered, or approved direct sewer meters, for each Domestic and Industrial User, except as otherwise specifically provided below in Section 5 paragraph (b). The following monthly rates are hereby fixed as rates to be charged for sewer service and shall become effective for sewer services billed on or after January 1, 2020.

Inside City: Minimum 1,500 Gallons Next 23,500 Gallons Next 225,000 Gallons Next 350,000 Gallons Next 400,000 Gallons All Over 1,000,000 Gallons	1/01/20	10/01/20	10/01/21	10/01/22	10/01/23
	\$10.00	\$10.30	\$10.60	\$10.90	\$11.20
	\$ 3.37	\$ 3.57	\$ 3.77	\$ 3.97	\$ 4.17
	\$ 3.33	\$ 3.53	\$ 3.73	\$ 3.93	\$ 4.13
	\$ 3.24	\$ 3.44	\$ 3.64	\$ 3.84	\$ 4.04
	\$ 3.11	\$ 3.31	\$ 3.51	\$ 3.71	\$ 3.91
	\$ 2.96	\$ 3.16	\$ 3.36	\$ 3.56	\$ 3.76
Outside City:  Minimum 1,500 Gallons Next 23,500 Gallons Next 225,000 Gallons Next 350,000 Gallons Next 400,000 Gallons All Over 1,000,000 Gallons	1/01/20	10/01/20	10/01/21	10/01/22	10/01/23
	\$11.25	\$11.55	\$11.85	\$12.15	\$12.45
	\$ 3.68	\$ 3.88	\$ 4.08	\$ 4.28	\$ 4.48
	\$ 3.60	\$ 3.80	\$ 4.00	\$ 4.20	\$ 4.40
	\$ 3.47	\$ 3.67	\$ 3.87	\$ 4.07	\$ 4.27
	\$ 3.44	\$ 3.64	\$ 3.84	\$ 4.04	\$ 4.24
	\$ 3.06	\$ 3.26	\$ 3.46	\$ 3.66	\$ 3.86

#### SCHEDULE B:

All Industrial Users are subject to an additional monthly sewer service charge (surcharge) to defray the long or short term costs associated with the treatment of high strength wastewater.

Monthly average discharges of Biochemical Oxygen Demand (BOD) of 289 mg/L and Total Suspended Solids (TSS) of 300 mg/L shall not be exceeded without incurring a surcharge.

(a) A surcharge shall be added to the monthly sewer bill of any Industrial User whose wastewater discharge exceeds the allowable base established herein. Such surcharge shall be calculated using the following formula:

FORMULA FOR CALCULATING SURCHARGES: S = Vww x 8.34 [Y (TSS - 300) + Z (BOD - 289)]

Where:

S	=	Surcharge in Dollars (monthly)
Vww	=	Volume wastewater in million gallons (monthly)
8.34	=	Pounds per gallon of water
Υ	=	Unit charge of TSS in dollars per pound
TSS	=	Total Suspended Solids strength index in milligrams per liter by weight (300 mg/L or more)
300	=	Maximum TSS strength in milligrams per liter by weight
Z	=	Unit charge for BOD in dollars per pound
BOD	=	Five day Biochemical Oxygen Demand strength index in milligrams per liter by weight (289 mg/L or more)
289	=	Maximum BOD strength in milligrams per liter

Current charges for Y = \$0.547Current charges for Z = \$0.330

- (b) The Springdale Water and Sewer Commission is authorized to suspend part or all of the surcharge based upon preapproved authorization to make scheduled repairs or installation of equipment.
- (c) The current unit charge for Total Suspended Solids (Y) and the current unit charge for Biochemical Oxygen Demand (Z), as listed above, shall remain effective for sewer service billed. The Springdale Water and Sewer Commission shall review annually on a fiscal year basis the actual cost of treating high strength waste and shall increase or decrease the unit charge for Y and Z of the Formula for Calculating Surcharges in accordance with the finding of such review.

SECTION 4: That no free facilities or sewer services shall be furnished. In the event that the city or any department, agency or instrumentality thereof shall avail itself of the facilities or services afforded by the sanitary sewer service of the City of Springdale, the reasonable value of the service or facilities so afforded shall be charged against the city or such department, agency or instrumentality and shall be paid for as the charges therefore accrue at industrial rates.

SECTION 5: That the above schedule of rates be, and they are hereby fixed as rates to be charged for services to be rendered and benefits to be received from the wastewater collection and treatment facilities, to-wit:

- (a) All bills for sewage collection and treatment shall be rendered to the user monthly, such statements to be rendered and collected by the City of Springdale, and shall cover the same period and collection procedures as corresponding water bills. All bills shall be rendered in the net amount due and the charge shall be determined by each thousand gallons of water, or portion thereof, furnished to each user.
- (b) The gallonage of sewage collected and treated shall be based on water metered to each Domestic and Industrial User, exclusive of seasonal water and other water uses metered separately which do not directly or indirectly discharge flows into the sanitary sewer system. Direct sewer meters may also provide monthly treatment if approved in advance by Springdale Water Utilities.
- (c) All users shall be connected to the Springdale water system and the discharge of all liquid waste to the sanitary system shall be derived from metered water supplied by the City of Springdale. The discharge of seasonal water, storm water, surface water, groundwater, roof runoff, or water from other sources which are not metered for sewer charges are prohibited.

SECTION 6: Any user who feels that their user charge is unjust and inequitable may make written application to the business office of Springdale Water Utilities (the assumed name under which the Springdale Water and Sewer Commission does business) requesting a review of the user's charge. Said written request shall, where necessary, show the actual or estimated average flow and/or strength of the user's wastewater in comparison with the values upon which the charge is based, including how the measurements or estimates were made. Review of the request shall be made by the Office Manager or a designated representative of Springdale Water Utilities. If the user's request for an adjustment of the billing charges is substantiated, the sewer charges for that user may be adjusted in conformance with the adjustment policy of the Springdale Water and Sewer Commission. Billing adjustments shall be based on the revised flow and/or strength data.

SECTION 7: That if any section, sub-section, sentence, clause or phrase of this ordinance is for any reason declared unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining sections of this ordinance. This ordinance shall take precedence over any terms

or conditions or agreements or contracts which are inconsistent with the requirements of Section 204 (b) (1) (A) of the Clean Water Act, as amended or 40 CFR Part 35, Subpart I, Section 35.2140 promulgated by the United States Environmental Protection Agency on February 17, 1984.

SECTION 8: That the Springdale City Council, after investigation, finds that the above rates are reasonable and necessary rates to be charged for sewer service by the City of Springdale, Arkansas. The Council further specifically finds that said rates are sufficient to provide for the operation and maintenance of the Springdale sewer system and are necessary for the payment of principal and interest on bonds to be issued to finance sewer works construction and to expand such system as may from time to time be required, and to provide depreciation funds for replacement of the sewer system.

PASSED AND APPROVED THISD	DAY OF, 2019.
	APPROVED:
ATTEST:	DOUG SPROUSE, MAYOR
DENISE PEARCE, CITY CLERK	
APPROVED AS TO FORM:	w
ERNEST CATE, CITY ATTORNEY	

ORDINANCE NO.	

AN ORDINANCE REPEALING ORDINANCE NO. 4951; ESTABLISHING WATER RATES TO BE CHARGED BY THE CITY OF SPRINGDALE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Springdale has found that it is necessary to increase water rates because of progressive cost advances in water purchases, general operating expenses, and capital improvements;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE, ARKANSAS:

SECTION 1: That Ordinance No. 4951 of the City of Springdale, Arkansas is hereby specifically repealed and that all ordinances and parts of ordinances establishing schedules of rates for water to be supplied by Springdale Water Utilities are repealed as of the effective date of the schedule herein established.

SECTION 2: That the following schedule of rates is hereby established for water furnished by the Springdale Water and Sewer Commission. Except for public fire services, all water used shall be measured through meters. The size of each meter shall be determined by the Springdale Water and Sewer Commission commensurate with its estimate of the amount of water to be used for each premise. This schedule shall become effective for water billed on or after January 1, 2020.

(a) FOR EACH THOUSAND GALLONS OR PORTION THEREOF FURNISHED TO USERS, EXCLUSIVE OF SEASONAL WATER METERED SEPARATELY, THE FOLLOWING RATES SHALL APPLY TO THE AMOUNT OF WATER USED:

Inside Cit Minimum Next Next Next Next All Over	1,500 Gallons 23,500 Gallons 225,000 Gallons 350,000 Gallons 400,000 Gallons 1,000,000 Gallons	1/01/20 \$10.00 \$ 3.27 \$ 3.22 \$ 3.12 \$ 2.97 \$ 2.80	10/01/20 \$10.30 \$ 3.47 \$ 3.42 \$ 3.32 \$ 3.17 \$ 3.00	10/01/21 \$10.60 \$ 3.67 \$ 3.62 \$ 3.52 \$ 3.37 \$ 3.20	10/01/22 \$10.90 \$ 3.87 \$ 3.82 \$ 3.72 \$ 3.57 \$ 3.40	10/01/23 \$11.20 \$ 4.07 \$ 4.02 \$ 3.92 \$ 3.77 \$ 3.60
Outside C Minimum Next Next Next Next All Over	1,500 Gallons 23,500 Gallons 225,000 Gallons 350,000 Gallons 400,000 Gallons 1,000,000 Gallons	1/01/20 \$11.75 \$ 3.62 \$ 3.52 \$ 3.37 \$ 3.22 \$ 2.92	10/01/20 \$12.05 \$ 3.82 \$ 3.72 \$ 3.57 \$ 3.42 \$ 3.12	10/01/21 \$12.35 \$ 4.02 \$ 3.92 \$ 3.77 \$ 3.62 \$ 3.32	10/01/22 \$12.65 \$ 4.22 \$ 4.12 \$ 3.97 \$ 3.82 \$ 3.52	10/01/23 \$12.95 \$ 4.42 \$ 4.32 \$ 4.17 \$ 4.02 \$ 3.72

(b) FOR EACH THOUSAND GALLONS OF WATER OR PORTION THEREOF FURNISHED TO USERS WHO ARE OUTSIDE THE CITY LIMITS OF THE CITY OF SPRINGDALE, ARKANSAS, AND WITHIN THE SERVICE AREA PREVIOUSLY SERVICED BY THE WHITE RIVER RURAL WATER ASSOCIATION:

	1/01/20	10/01/20	10/01/21	10/01/22	10/01/23
Minimum (first 1,000 Gallons)	\$19.00	\$19.20	\$19.40	\$19.60	\$19.80
Next 4,000 Gallons	\$ 4.37	\$ 4.57	\$ 4.77	\$ 4.97	\$ 5.17
Next 5,000 Gallons	\$ 4.12	\$ 4.32	\$ 4.52	\$ 4.72	\$ 4.92
Next 10,000 Gallons	\$ 3.87	\$ 4.07	\$ 4.27	\$ 4.47	\$ 4.67
All Over 20,000 Gallons	\$ 3.62	\$ 3.82	\$ 4.02	\$ 4.22	\$ 4.42

(c) FOR EACH SEASONAL METER, A MINIMUM CHARGE SHALL BE BILLED FOR MONTHLY SERVICE BASED UPON THE CUSTOMER'S METER SIZE:

Meter Size	Inside City	Outside City
5/8" x 3/4"	\$ 2.50	\$ 3.50
1"	\$ 3.00	\$ 4.50
1-1/2"	\$ 4.50	\$ 7.00
2"	\$ 7.00	\$12.00
3"	\$10.50	\$19.00
4"	\$18.00	\$35.00
6"	\$37.00	\$74.00

(d) IN ADDITION TO THE MINIMUM MONTHLY CHARGE FOR SEASONAL WATER SERVICE, THE FOLLOWING RATES SHALL BE CHARGED FOR EACH THOUSAND GALLONS OF WATER OR PORTION THEREOF MEASURED THROUGH A SEASONAL METER:

	<u>1/01/20</u>	10/01/20	10/01/21	10/01/22	10/01/23
Inside City	\$ 3.24	\$ 3.44	\$ 3.64	\$ 3.84	\$ 4.04
Outside City	\$ 3.54	\$ 3.74	\$ 3.94	\$ 4.14	\$ 4.34

SECTION 3: The schedule of rates set forth above in Section 2 does not apply to special contracts which are deemed to be contracts for the sale of bulk water to neighboring communities and entities operating public water systems, except where said contracts specifically incorporate the schedule of rates set forth above.

SECTION 4: Any charge incurred by the Springdale Water and Sewer Commission pursuant to the Safe Drinking Water Act or other federal or state legislation, shall be added to the foregoing schedule of rates.

SECTION 5: The City Council finds that the forgoing schedule of rates is required to provide the funds necessary to provide depreciation funds for replacement or repairs of the water system, to provide sufficient revenue for the reasonable operation and maintenance expenses of the water system, and to provide ample reserves for future capital improvements.

SECTION 6: This ordinance shall not affect meter deposits to be maintained by the Springdale Water and Sewer Commission, which deposits shall be established and maintained in accordance with the policies of the Springdale Water and Sewer Commissions; and by state law.

SECTION 7: The provisions of this Ordinance are separable, and if any portion, section, provision or phrase of this Ordinance shall be declared invalid or unconstitutional, such action shall not affect the validity of the remainder of this Ordinance.

PASSED AND APPROVED THISD	AY OF	, 2019.
	APPROVED:	
ATTEST:	DOUG SPROUSE, MAYO	DR
DENISE PEARCE, CITY CLERK		
APPROVED AS TO FORM:		
ERNEST CATE, CITY ATTORNEY		

ORDINANCI	E NO.

AN ORDINANCE ACCEPTING A NEW ADDITION TO THE CITY OF SPRINGDALE, ARKANSAS TO BE KNOWN AS (SUMMER VIEW SUBDIVISION), A SUBDIVISION TO THE CITY OF SPRINGDALE, ARKANSAS, AND DECLARING AN EMERGENCY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE, ARKANSAS: That whereas, there has been duly presented to the City Planning Commission of Springdale, Arkansas, a plat of certain lands in the City of Springdale, Washington County, Arkansas, being more particularly described as follows, to-wit:

A PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 17 NORTH, RANGE 29 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT THE NORTHWEST CORNER OF SAID FORTY ACRE TRACT AND RUNNING THENCE ALONG THE NORTH LINE THEREOF S87°28'32"E 663.82', THENCE LEAVING SAID NORTH LINE S02°27'46"W 200.00', THENCE S87°26'53"E 663.95', THENCE S02°25'43"W 268.00', THENCE N87°26'09"W 1328.47', THENCE N02°31'45"E 467.40' TO THE POINT OF BEGINNING, CONTAINING 11.21 ACRES, MORE OR LESS. SUBJECT TO THAT PORTION IN JULIO ROAD RIGHT-OF-WAY ON THE NORTH SIDE OF HEREIN DESCRIBED TRACT, SUBJECT TO THAT PORTION IN BUTTERFIELD COACH ROAD RIGHT-OF-WAY ON THE EAST SIDE OF HEREIN DESCRIBED TRACT, AND SUBJECT TO ALL OTHER EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

AND WHEREAS, said Planning Commission has approved the plat as presented by petitioner, and has approved the dedication of streets, rights-of-way and utility easements as shown upon said plat and join with the said petitioner in petitioning the City Council to accept said (Summer View Subdivision), to the City of Springdale, Arkansas.

**AND WHEREAS**, a hearing was held upon the acceptance of said plat by the City Planning Commission and that there appeared no protestants to the acceptance and dedication:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE, ARKANSAS, that the (Summer View Subdivision), as shown on the plat approved by the City Planning Commission, a copy of which is attached to this ordinance and made a part hereof as through set out herein word for word, be and the same is hereby accepted by the City of Springdale, Washington County, Arkansas, and the City hereby accepts for the use and benefit of the public the dedications contained therein.

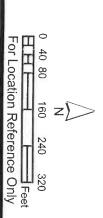
**EMERGENCY CLAUSE:** It is hereby declared that an emergency exists in that the owner of property will be deprived of the full use and enjoyment of their property and will not be able to complete the sale of their property within thirty days and therefore an emergency exists.

The ordinance passed this 12 day of November, 2019.

CITY OF SPRINGDALE. SPRINGDALE, ARKANSAS	
BY:	_
Doug Sprouse - MAYOR	

ATTEST:
City Clerk
APPROVED AS TO FORM:
City Attorney





Final Plat - Summerview Subdivision

RESOL	UTION	NO.	

# A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR ARCHITECT SERVICES PROJECT NO. 18BPF3

**WHEREAS**, the City of Springdale is planning to construct Fire Station #9 located at 7561 W. Downum Road, and

WHEREAS, using the procurement procedures required by State Law, the program management team has selected Miller Boskus Lack Architects, P.A. as the most qualified firm;

WHEREAS, the contract proposes a fee of 5% of the cost of construction work, and

WHEREAS, project construction has been estimated to be under \$3,000,000.00.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that

**Section 1**. Expenditures for this project will be paid from the 2018 Bond Fund.

Section 2. The Mayor and City Clerk are hereby authorized to execute an architecture services contract with Miller Boskus Lack Architects, P.A. for the construction design of Fire Station #9.

PASSED AND APPROVED this 12<sup>th</sup> day of November, 2019.

ATTEST:	Doug Sprouse, Mayor		
*			
Denise Pearce, City Clerk			
APPROVED AS TO FORM:			
Ernest B. Cate, City Attorney	1		



### Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services

AGREEMENT made as of the <u>Twenty-Fourth</u> day of <u>October</u> in the year <u>Two Thousand Nineteen</u> (In words, indicate day, month and year.)

**BETWEEN** the Architect's client identified as the Owner: (Name, legal status, address and other information)

City of Springdale, Arkansas 201 Spring Street Springdale, Arkansas 72764 This document has important legal consequences.
Consultation with an attorney is encouraged with respect to its completion or modification.

and the Architect:

(Name, legal status, address and other information)

Miller Boskus Lack Architects. P.A. 2397 N. Green Acres Road Favetteville. Arkansas 72703

for the following (hereinafter referred to as "the Project"): (Insert information related to types of services, location, facilities, or other descriptive information as appropriate.)

City of Springdale Fire Station #9 7561 W. Downum Road Springdale. Arkansas 72762

lnit.

The Owner and Architect agree as follows.

(3B9ADA59)

#### TABLE OF ARTICLES

- 1 ARCHITECT'S RESPONSIBILITIES
- 2 OWNER'S RESPONSIBILITIES
- 3 COPYRIGHTS AND LICENSES
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- 6 COMPENSATION
- 7 MISCELLANEOUS PROVISIONS
- 8 SPECIAL TERMS AND CONDITIONS
- 9 SCOPE OF THE AGREEMENT

#### ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The Architect shall provide the following professional services:

(Describe the scope of the Architect's services or identify an exhibit or scope of services document setting forth the Architect's services and incorporated into this document in Section 9.2.)

- § 1.1.1 The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.
- § 1.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of
- § 1.3 The Architect identifies the following representative authorized to act on behalf of the Architect with respect to

(List name, address, and other contact information.)

Audy Lack or Greg Walker Miller Boskus Lack Architects, P.A. 2397 N. Green Acres Road Favetteville, Arkansas 72703 PH: 479-443-7121

- § 1.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.
- § 1.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 6.2.3.

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- § 1.5.1 Commercial General Liability with policy limits of not less than <u>Two Million Dollars and Zero Cents</u> (\$2.000.000.00) for each occurrence and <u>Two Million Dollars and Zero Cents</u> (\$2.000.000.00) in the aggregate for bodily injury and property damage.
- § 1.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars and Zero Cents (\$ 2,000,000,00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.
- § 1.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 1.5.1 and 1.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.
- § 1.5.4 Workers' Compensation at statutory limits.
- § 1.5.5 Employers' Liability with policy limits not less than One Million Dollars and Zero Cents (\$ 1,000,000.00 ) each accident, One Million Dollars and Zero Cents (\$ 1,000,000.00 ) each employee, and One Million Dollars and Zero Cents (\$ 1,000,000.00 ) policy limit.
- § 1.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than <a href="Two Million Dollars and Zero Cents">Two Million Dollars and Zero Cents</a> (\$ 2.000,000.00) in the aggregate.
- § 1.5.7 Additional Insured Obligations. If requested by the Owner, to the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.
- § 1.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 1.3.

#### ARTICLE 2 OWNER'S RESPONSIBILITIES

- § 2.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.
- § 2.2 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services. (List name, address, and other contact information.)

Wyman Morgan
City of Springdale
201 Spring Street
Springdale. Arkansas 72764

§ 2.3 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional

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Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

- § 2.4 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.
- § 2.5 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.
- § 2.6 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

#### ARTICLE 3 COPYRIGHTS AND LICENSES

- § 3.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.
- § 3.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.
- § 3.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the purposes of evaluating, constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 5 and Article 6. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 5.4, the license granted in this Section 3.3 shall terminate.
- § 3.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 3.3.1. The terms of this Section 3.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 5.4.
- § 3.4 Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.
- § 3.5 Except as otherwise stated in Section 3.3, the provisions of this Article 3 shall survive the termination of this Agreement.

#### ARTICLE 4 CLAIMS AND DISPUTES

#### § 4.1 General

§ 4.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but

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in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 4.1.1.

§ 4.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 4.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 5.7.

#### § 4.2 Mediation

§ 4.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 4.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filling of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filling, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 4.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

5 4.2.4	the parties do r	ot resolve a dispute	through mediation r	ursuant to this Section	4.2, the method of binding
dispute i	resolution shall	be the following:	, j	answar to this section.	4.2, we memod of binding
	he appropriate				

. 1		Arbitration pursuant to Section 4.3 of this Agreement
<u>X</u> ]		Litigation in a court of competent jurisdiction
	]	Other (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

#### § 4.3 Arbitration

§ 4.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the

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date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

- § 4.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.
- § 4.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.
- § 4.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### § 4.3.4 Consolidation or Joinder

- § 4.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).
- § 4.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.
- § 4.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 4.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.
- § 4.4 The provisions of this Article 4 shall survive the termination of this Agreement.

#### ARTICLE 5 TERMINATION OR SUSPENSION

- § 5.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.
- § 5.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.
- § 5.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.
- § 5.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

- § 5.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.
- § 5.6 If the Owner terminates this Agreement for its convenience pursuant to Section 5.5, or the Architect terminates this Agreement pursuant to Section 5.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.
- § 5.7 In addition to any amounts paid under Section 5.6, if the Owner terminates this Agreement for its convenience pursuant to Section 5.5, or the Architect terminates this Agreement pursuant to Section 5.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

- .1 Termination Fee:
- .2 Licensing Fee, if the Owner intends to continue using the Architect's Instruments of Service:
- § 5.8 Except as otherwise expressly provided herein, this Agreement shall terminate (Check the appropriate box.)
- [ ] One year from the date of commencement of the Architect's services
- [X] One year from the date of Substantial Completion
- [ ] Other

(Insert another termination date or refer to a termination provision in an attached document or scope of service.)

If the Owner and Architect do not select a termination date, this Agreement shall terminate one year from the date of commencement of the Architect's services.

§ 5.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 5.7.

#### ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Architect as set forth below for services described in Section 1.1, or in the attached exhibit or scope document incorporated into this Agreement in Section 9.2. (Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.)

#### See attached Exhibit A

#### § 6.2 Compensation for Reimbursable Expenses

- § 6.2.1 Reimbursable Expenses are in addition to compensation set forth in Section 6.1 and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:
  - .1 Transportation and authorized out-of-town travel and subsistence;
  - .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
  - .3 Permitting and other fees required by authorities having jurisdiction over the Project;
  - .4 Printing, reproductions, plots, and standard form documents;

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- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar Project-related expenditures.
- § 6.2.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10 %) of the expenses incurred.
- § 6.2.3 Architect's Insurance. If the types and limits of coverage required in Section 1.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 1.3, and for which the Owner shall reimburse the Architect)

#### § 6.3 Payments to the Architect

#### § 6.3.1 Initial Payments

§ 6.3.1.1 An initial payment of Zero Dollars (\$ .00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

#### § 6.3.2 Progress Payments

§ 6.3.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid <u>Thirty</u> (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. (Insert rate of monthly or annual interest agreed upon.)

#### 10 % Ten Percent

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- § 6.3.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.
- § 6.3.2.3 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

#### ARTICLE 7 MISCELLANEOUS PROVISIONS

- § 7.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 4.3.
- § 7.2 Except as separately defined herein, terms in this Agreement shall have the same meaning as those in AIA Document A201<sup>TM</sup>\_2017, General Conditions of the Contract for Construction.
- § 7.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for

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the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

- § 7.4 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203TM-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.
- § 7.4.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E2037M-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G20274-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.
- § 7.5 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.
- § 7.6 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.
- § 7.7 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.
- § 7.8 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 7.8 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 5.4.
- § 7.9 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 7.9.1. This Section 7.9 shall survive the termination of this Agreement.
- § 7.9.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 7.9.
- § 7.10 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

#### ARTICLE 8 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

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(Include other terms and conditions applicable to this Agreement)

#### ARTICLE 9 SCOPE OF THE AGREEMENT

§ 9.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 9.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B102<sup>TM</sup>-2017, Standard Form Agreement Detween Owner and Figure 2013, AIA Document E203<sup>TM</sup>-2013, Building Information Modeling and Digital Data Exhibit, dated as

(Insert the date of the E203-2013 incorporated into this Agreement.)

AIA Document B201-2017. Standard Form of Architect's Services: Design and Construction Contract Administration

AIA Document A201-2017. General Conditions of the Contract for Construction

.3 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

[ ] AIA Document E204TM\_2017, Sustainable Projects Exhibit, dated as indicated below: (Insert the date of the E204-2017 incorporated into this Agreement.)

[X] Other Exhibits incorporated into this Agreement: (Clearly identify any other exhibits incorporated into this Agreement.)

Exhibit A - Compensation

Exhibit B - Limitation of Liability

.4 Other documents:

(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Doug Sprouse - Mavor

City of Springdale, Arkansas

(Printed name and title)

Init.

ARCHITECT (Signature)

Audy G. Lack - Principal

Miller Boskus Lack Architects, P.A.

(Printed name, title, and license number, if required)

The individual signing this Agreement, on behalf of the Owner, personally represents and warrants to the Project Manager and Project Manager's successors and assigns that such individual is duly authorized to sign this Agreement on behalf of the Owner and to bind the Owner by his/her signature without the joinder or approval of any other party. In the event that the undersigned is not so authorized to enter into this Agreement on behalf of the Owner or to so bind the Owner to this Agreement by his/her signature, the undersigned personally guarantees the payment and performance of the obligations and covenants of the Owner under this Agreement.

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# Certification of Document's Authenticity

AIA® Document D401™ - 2003

I, Audy G. Lack - Principal, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification 15:09:39 ET on 10/24/2019 under Order No. 9646907533 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B102<sup>TM</sup> - 2017, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

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11.05.19



# Standard Form of Architect's Services: Design and Construction Contract Administration

for the following PROJECT:

(Name and location or address)

City of Springdale Fire Station #9 7561 W. Downum Road Springdale. Arkansas 72762

THE OWNER:

(Name, legal status and address)

City of Sprindale. Arkansas 201 Spring Street Springdale, Arkansas 72764

THE ARCHITECT:

(Name, legal status and address)

Miller Boskus Lack Architects. P.A. 2397 N. Green Acres Road Favetteville. Arkansas 72703

#### THE AGREEMENT

This Standard Form of Architect's Services is part of the accompanying Owner-Architect Agreement (hereinafter, together referred to as the Agreement) dated the day of in the year .

(In words, indicate day, month and year.)

#### TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 SCOPE OF ARCHITECT'S BASIC SERVICES
- 3 SUPPLEMENTAL AND ADDITIONAL SERVICES
- 4 OWNER'S RESPONSIBILITIES
- 5 COST OF THE WORK
- 6 COMPENSATION
- 7 ATTACHMENTS AND EXHIBITS

#### ARTICLE 1 INITIAL INFORMATION

§ 1.1 The Agreement is based on the Initial Information set forth in this Section 1.1. (For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

This document has important legal consequences.
Consultation with an attorney is encouraged with respect to its completion or modification.

This document provides the Architect's scope of services only and must be used with an numer. architect agreement. It may be used with AIA Document 8102™-2017, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services, to provide the Architect's sole scope of services, or with B102 in conjunction with other standard form services documents. It may also be used with G802™-2017, Amendment to the Professional Services Agreement, to create a modification to any ownerarchitect agreement.

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§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 5.1: (Provide total and, if known, a line item breakdown.)

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- § 1.1.4 The Owner's anticipated design and construction milestone dates:
  - .1 Design phase milestone dates, if any:
  - .2 Construction commencement date:
  - .3 Substantial Completion date or dates:
  - .4 Other milestone dates:
- § 1.1.5 The Owner intends the following procurement and delivery method for the Project: (Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

#### Construction Management

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§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project: (Identify and describe the Owner's Sustainable Objective for the Project, if any.)

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204<sup>TM</sup>-2017, Sustainable Projects Exhibit, into the Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into the Agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

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(389ADA4F)

Mike Irwin. Fire Chief City of Springdale 417 Holcomb Springdale. Arkansas 72764

§ 1.1.8 The Owner shall retain the following consultants and contractors: (List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

.2 Civil Engineer:

1207 S. Old Missouri Road Springdale, Arkansas 72764 PH: 479-751-8733

.3 Other, if any:

(List any other consultants and contractors retained by the Owner.)

§ 1.1.9 The Architect shall retain the consultants identified in Sections 1.1.9.1 and 1.1.9.2: (List name, legal status, address, and other contact information.)

§ 1.1.9.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Robbins Engineering, PLLC 10018 W. Markham Street Little Rock, Arkansas 72205 PH: 501-664-7575

.2 Mechanical Engineer:

HSA Engineering Consulting Services, Inc. 7405 Ellis Street Fort Smith, Arkansas 72916 PH: 479-452-8922

lnit.

.3 Electrical Engineer:

HSA Engineering Consulting Services, Inc. 7405 Ellis Street Fort Smith, Arkansas 72916 PH: 479-452-8922

§ 1.1.9.2 Consultants retained under Supplemental Services:

Fire Station Consultant: Mary McGrath. Architect 1212 Broadway. Suite 401 Oakland. California 94612 PH: 510-208-9400

§ 1.1.10 Other Initial Information on which the Agreement is based:

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

#### ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

- § 2.1 The Architect's Basic Services consist of those described in this Article 2 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 2 are Supplemental or Additional Services.
- § 2.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.
- § 2.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.
- § 2.1.3 As soon as practicable after the date of the Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.
- § 2.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

- § 2.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.
- § 2.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

#### § 2.2 SCHEMATIC DESIGN PHASE SERVICES

- § 2.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.
- § 2.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.
- § 2.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.
- § 2.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.
- § 2.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.
- § 2.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 3.1.1.
- § 2.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.
- § 2.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with
- § 2.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's

#### § 2.3 DESIGN DEVELOPMENT PHASE SERVICES

- § 2.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.
- § 2.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 5.3.

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§ 2.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

#### § 2.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 2.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 2.6.4.

§ 2.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 2.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 2.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 5.3.

§ 2.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 5.5, and request the Owner's approval.

#### § 2.5 PROCUREMENT PHASE SERVICES

#### § 2.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

#### § 2.5.2 Competitive Bidding

§ 2.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 2.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- 4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 2.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

#### § 2.5.3 Negotiated Proposals

§ 2.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 2.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

.1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;

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- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.
- § 2.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

#### § 2.6 CONSTRUCTION PHASE SERVICES

#### § 2.6.1 General

- § 2.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201<sup>TM</sup>-2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2017, those modifications shall not affect the Architect's services under the Agreement unless the Owner and the Architect amend the Agreement.
- § 2.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in the Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.
- § 2.6.1.3 Subject to Section 3.2 and except as provided in Section 2.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

#### § 2.6.2 Evaluations of the Work

- § 2.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 3.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.
- § 2.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.
- § 2.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- § 2.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The

Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 2.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

#### § 2.6.3 Certificates for Payment to Contractor

§ 2.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 2.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 2.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 2.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

#### § 2.6.4 Submittals

§ 2.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 2.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 2.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 2.6.4.4 Subject to Section 3.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable

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promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 2.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

#### § 2.6.5 Changes in the Work

§ 2.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 3.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 2.6.5.2 The Architect shall maintain records relative to changes in the Work.

#### § 2.6.6 Project Completion

#### § 2.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.
- § 2.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.
- § 2.8.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.
- § 2.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.
- § 2.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

# ARTICLE 3 SUPPLEMENTAL AND ADDITIONAL SERVICES § 3.1 SUPPLEMENTAL SERVICES

§ 3.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 6.2. Unless otherwise specifically addressed in the Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service Insert a description of the Supplemental Services in Section 3.1.2 below or attach the description of services as an exhibit to the Agreement.)

Supplemental Services	Responsibility (Architect, Owner or Not Provided)	
§ 3.1.1.1 Programming	Architect	

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§ 3.1.1.2 N	lultiple preliminary designs	Not Provided
§ 3.1.1.3 N	leasured drawings	Not Provided
\$3.1.1.4 E	xisting facilities surveys	Not Provided
§ 3.1.1.5 S	te evaluation and planning	Architect
- T	uilding Information Model management esponsibilities	Architect
f	evelopment of Building Information Models or post construction use	Not Provided
	vil engineering	Owner
	ndscape design	Architect
§ 3.1.1.10	Architectural interior design	Architect
§ 3.1.1.11 \	alue analysis	Architect and Construction Manager
ir	Detailed cost estimating beyond that required a Section 5.3	Not Provided
§ 3.1.1.13 (	n-site project representation	Not Provided
§ 3.1.1.14 C	onformed documents for construction	Not Provided
§ 3.1.1.15 A	s-designed record drawings	Not Provided
§ 3.1.1.16 A	s-constructed record drawings	Not Provided
§ 3.1.1.17 P	ost occupancy evaluation	Not Provided
53.1.1.18 F	acility support services	Not Provided
	enant-related services	Not Provided
C	rchitect's coordination of the Owner's onsultants	Architect
design of cor does not incl	elecommunications/data design <u>includes</u> nmunications, radio, telephone, data systems; ude design of Head-In System	Architect
§ 3.1.1.22 S	ecurity evaluation and planning	Not Provided
§ 3.1.1.23 C	ommissioning	Owner
Se	stainable Project Services pursuant to ection 3.1.3	Not Provided
§ 3.1.1.25 Fa	st-track design services	Not Provided
§ 3.1.1.26 M	ultiple bid packages	Not Provided
§ 3.1.1.27 H	storic preservation	Not Provided
§ 3.1.1.28 Ft	rniture, furnishings, and equipment design	Architect
§ 3.1.1.29 O	her services provided by specialty onsultants - Fire Station Consultant	Architect
\$ 3.1.1.30 O	her Supplemental Services	

#### § 3.1.2 Description of Supplemental Services

§ 3.1.2.1 A description of each Supplemental Service identified in Section 3.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 3.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

#### See attached Exhibit A

§ 3.1.2.2 A description of each Supplemental Service identified in Section 3.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 3.1.1 or, if set forth in an exhibit, identify the exhibit.)

Ink.

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§ 3.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204<sup>TM</sup>-2017, Sustainable Projects Exhibit, attached to the Agreement. The Owner shall compensate the Architect as provided in Section 6.2.

#### § 3.2 ARCHITECT'S ADDITIONAL SERVICES

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The Architect may provide Additional Services after execution of the Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 3.2 shall entitle the Architect to compensation pursuant to Section 6.3 and an appropriate adjustment in the Architect's schedule.

- § 3.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:
  - .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

.2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- 4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

.5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;

.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;

7 Preparation for, and attendance at, a public presentation, meeting or hearing;

.8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

.9 Evaluation of the qualifications of entitles providing bids or proposals;

- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 3.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;

4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,

.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 3.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

.1 Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

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- 2 Two Times Per Week (2/week) visits to the site by the Architect during construction
- .3 Three (3 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Three (3) inspections for any portion of the Work to determine final completion
- § 3.2.4 Except for services required under Section 2.6.6.5 and those services that do not exceed the limits set forth in Section 3.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.
- § 3.2.5 If the services covered by the Agreement have not been completed within thirty-six (36) months of the date of the Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

#### ARTICLE 4 OWNER'S RESPONSIBILITIES

- § 4.1 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 5.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.
- § 4.2 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.
- § 4.3 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.
- § 4.4 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
- § 4.5 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.
- § 4.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 3.1.1.
- § 4.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204<sup>TAL</sup>-2017, Sustainable Projects Exhibit, attached to the Agreement.
- § 4.8 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.
- § 4.9 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in the Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

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§ 4.10 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

#### ARTICLE 5 COST OF THE WORK

- § 5.1 For purposes of the Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.
- § 5.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 4.1, 5.4 and 5.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.
- § 5.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 3.1.1, as a Supplemental Service.
- § 5.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.
- § 5.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.
- § 5.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall
  - .1 give written approval of an increase in the budget for the Cost of the Work;
  - .2 authorize rebidding or renegotiating of the Project within a reasonable time;
  - .3 terminate in accordance with Section 5.5 of AIA Document B102TN-2017;
  - .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
  - .5 implement any other mutually acceptable alternative.
- § 5.7 If the Owner chooses to proceed under Section 5.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 5.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 6.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 5.

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#### ARTICLE 6 COMPENSATION

§ 6.1 If not otherwise specifically addressed in the Agreement, the Owner shall compensate the Architect for the Architect's Basic Services as follows:

- .1 Stipulated Sum (Insert amount)
- .2 Percentage Basis

#### See attached Exhibit A

(Insert percentage value)

- ( )% of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 6.6.
  - .3 Other (Describe the method of compensation)
- § 6.2 For the Architect's Supplemental Services designated in Section 3.1.1 and for any Sustainability Services required pursuant to Section 3.1.3, the Owner shall compensate the Architect as follows: (Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

#### See attached Exhibit A

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§ 6.3 For Additional Services that may arise during the course of the Project, including those under Section 3.2, the Owner shall compensate the Architect as follows: (Insert amount of, or basis for, compensation.)

To be determined and will be agreed to in writing prior to the architect completing these services.

- § 6.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 6.2 or 6.3, shall be the amount invoiced to the Architect plus ten percent (10 %), or as follows: (Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)
- § 6.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase Design Development Phase Construction Documents Phase	Zero Twenty Fifty	percent ( percent ( percent (	<u>0</u> <u>20</u> <u>50</u>	%) %) %)
Procurement Phase Construction Phase	Zero Thirty	percent ( percent (	<u>0</u> <u>30</u>	%) %)
Total Basic Compensation	one hundred	nercent (	100	0,4)

§ 6.6 When compensation identified in Section 6.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most

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recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 6.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with the Agreement for all services performed whether or not the Construction Phase is commenced.

§ 6.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. (If applicable, attach an exhibit of hourly billing rates or insert them below.)

See attached Exhibit A

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**Employee or Category** 

Rate (\$0.00)

#### § 6.8 INITIAL PAYMENT TO THE ARCHITECT FOR SUSTAINABILITY CERTIFICATION

If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (\$ ) shall be made upon execution of the Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

#### ARTICLE 7 ATTACHMENTS AND EXHIBITS

The following attachments and exhibits, if any, are incorporated herein by reference: (List other documents, if any, including any exhibits relied on in Section 3.1.)

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### Certification of Document's Authenticity

AIA® Document D401™ - 2003

I, Audy G. Lack - Principal, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification 15:30:53 ET on 10/24/2019 under Order No. 9646907533 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B201<sup>TM</sup> - 2017, Standard Form of Architect's Services: Design and Construction Contract Administration, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signled)

(TWA) PRINCIPAL

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#### Miller Boskus Lack Architects, P.A.

#### Exhibit "A"

#### **Article 6.0 - Basic Services Compensation**

Compensation for the Architects Basic Services, including the service of the MEP Engineers and Structural Engineer shall be computed by multiplying the percentage listed below for each phase of the work times the total cost of work less the total cost of furnishings, décor, and equipment not included in the architect's construction documents. The cost of the work shall be determined as defined in Article 2 of AIA Document B201-2017 Standard Form of Architect's Services:

Design and Construction Contract Administration progress payments shall be allocated to services as listed below and will be billed on a monthly basis.

2.0	Desigr 2.2 2.3 2.4 2.5 2.6	Services Schematic Design Design Development Construction Documents Construction Procuremen Contract Administration S		.00% 1.00% 2.50% 0.00% 1.50%	
		Compensation =	ervices	1.50% 5.00% x cost	of work

When compensation is based on a percentage of the Cost of Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with Article 5 of AIA Document B201-2017 Standard Form of Agreement Between Owner and Architect.

#### Article 6.2 – Reimbursable Expenses

Reimbursable expenses are in addition to compensation for the Architects' professional services and include expenses incurred by the Architect's consultant directly related to the project as follows: 1. Transportation and authorized out-of-town travel and subsistence; 2. Fees paid for securing approval of authorities having jurisdiction over the project; 3. Printing and Reproduction expenses; 4. Postage & Shipping.

#### Article 3.0 - Additional Services Compensation

Compensation for Additional Services will be computed as noted below.

#### 3.1.1.6 - BIM Modeling

The architect utilizes the latest in BIM modeling software. Three-dimensional modeling will be used for the design of this project and for presentations, renderings, and visualization of the new facility. BIM modeling will be utilized for the production of construction documents and coordination of the architect's engineers. A BIM model for construction is not required by the Construction Manager and is not required for the construction of this new facility and therefore is not part of this agreement and will not be provided for these projects. The architect's fee for BIM modeling is \$0.

#### 3.1.1.9 - Landscape Design

The architect will provide landscape design documents based on the design of Fire Station No. 8. The cost of this work is included in the base fee.

3.1.1.10 & 3.1.1.28 – Interior Design & FFE (Furniture, Fixtures, Equipment) Design The architect will select furnishing, décor, & fixtures as required by the owner. The architect will provide plans and specifications for these items for bidding and procurement by the City of Springdale. The fee for these services will be computed by multiplying the total cost of the furnishings, décor, and fixtures times 8.5%.

3.1.1.21 – Telecommunications, Data, Communications, Alarm System

The architect will hire a low voltage electrical consultant, such as West Net, to design the low voltage systems for telecommunications, data, and alarm systems. This will not include design of the Head-In systems. These will be procured directly by the City of Springdale. The fee for these services will be \$30,000.

#### 3.1.1.24 - LEED Certification

The architect will assist the owner in pursuit of LEED certification for the project. The architect will assign a LEED AP professional to the project and the architect will assist the owner in registering the projects with the USGBC. The architect will facilitate LEED workshops for the proposed design and the architect will provide plans and specifications to specify the LEED goals for the project. LEED certification is the intended goal of the project at the time of this agreement. LEED Silver or Gold certification will be studied and presented to the owner as options for the City of Springdale. The fee for LEED certification is 1.25% times the total project cost.

#### 3.1.1.29 - Fire Station Consultant

The architect will hire Mary McGrath Architects as the Fire Station Consultant for the project. The Fire Station Consultant will provide a review of the previous stations with the Owner and will make recommendations for any appropriate changes. The fee for this minor task is to be determined and will be billed as an additional service.

#### **Hourly Rates**

Principal	\$195.00 per hour
Senior Project Architect	\$175.00 per hour
Specification Writer	\$175.00 per hour
Director of Urban Design	\$165.00 per hour
Interior Architect	\$165.00 per hour
Architect III	\$165.00 per hour
Architect II	\$155.00 per hour
Architect I	\$145.00 per hour
Project Manager / BIM	\$145.00 per hour
Interior Designer	\$145.00 per hour
Administrative	\$ 70.00 per hour

#### Exhibit "B"

#### **Limitation of Liability**

- 1. If the owner does not engage the Architect to provide Services during the construction phase of the Project, then the Architect shall not be responsible for changes, if any, made by others in documents furnished by the Architect under the Agreement; for components of the Project, if any, for which Shop Drawings, Product Data or Samples are required; or for the failure of any construction contractor to construct the Project in accordance with documents furnished by the Architect; and for errors or omissions, if any, by the Architect which it is reasonable to assume would have been noticed and corrected by the Architect had the Architect been engaged to perform construction phase Services. The Owner hereby agrees to release, defend, and indemnify the Architect from and against all claims and liability arising out of or alleged to have arisen out of those matters which are stated in the foregoing sentence to be outside the Architect's responsibilities.
- 2. The Owner and the Architect intend that the Services in connection with the Project shall not subject the Architect's individual employees, officers, or directors to any personal legal exposure for the risks associated with the Project. Therefore, and notwithstanding anything to the contrary contained in the Agreement, the Owner agrees that, as the Owner's sole and exclusive remedy, all claims, demands and suits shall be directed and/or asserted only against the Architect, an Arkansas corporation, and not against any of the Architect's employees, officers, or directors.
- 3. The Owner and the Architect have discussed the Owner's risks, rewards and benefits associated with the Services and the Architect's risks and total compensation for Services. The Owner and the Architect have allocated the risks such that the Owner hereby agrees that, to the fullest extent permitted by law, the Architect's total liability to the Owner and all others for any and all injuries, claims, losses, costs, expenses, damages (including consequential damages), or claim expenses arising out of the Agreement or it's breach, from any cause or causes shall not exceed the total amount paid under the Architect's professional liability insurance. Such causes include, but are not limited to, the Architect's negligence, errors, omissions, strict liability, breach of contract, and breach of warranty.
- 4. The Owner agrees to defend, indemnify and hold the Architect harmless from all claims for liability in excess of the limits set forth in Paragraph 3, above, for injury or loss sustained or alleged by any person or entity, whether or not a party to the Agreement, and allegedly arising out of the Architect's performance of Services under the Agreement.
- 5. Since it would be unfair for the Architect to be exposed to liability for its failure to perform a service that the Owner had either refused to authorize or has instructed the Architect not to perform, the Owner hereby waives all claims against the Architect and agrees to defend, indemnify and hold the Architect harmless from claims or liability for injury or loss allegedly arising from the Architect's failure to perform a service that the Owner has either refused to authorize or has instructed the Architect not to perform.

# A RESOLUTION AUTHORIZING THE EXECUTION OF A CONSTRUCTION MANAGER CONTRACT FOR SPRINGDALE FIRE STATION #9 PROJECT NO. 18BPF3

**WHEREAS,** Arkansas Statute 19-11-801 provides for the employment of a construction manager for public improvement projects, and

WHEREAS, fire station #9 will be located at 7561 W. Downum Road and the Mayor has recommended Milestone Construction Company, LLC to serve as construction manager for this fire station, and

WHEREAS, Milestone Construction Company, LLC has agreed to furnish these services for a fee of \$5,000 for preconstruction services and 5% of the cost of construction for the construction phase.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the Mayor is hereby authorized to execute a contract for construction manager services with Milestone Construction Company, LLC for services to be provided relating to the design and construction of fire station #9.

**PASSED AND APPROVED** this 12<sup>th</sup> day of November, 2019.

ATTEST:	Doug Sprouse, Mayor
Denise Pearce, City Clerk	
APPROVED AS TO FORM:	
Ernest B. Cate, City Attorney	



# Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**AGREEMENT** made as of the 30th day of October in the year 2019 (In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status and address)

City of Springdale 201 Spring Street Springdale, AR 72764

and the Construction Manager: (Name, legal status and address)

Milestone Construction Company, LLC 2002 S. 48th Street, Suite A Springdale, AR 72762

for the following Project: (Name and address or location)

Fire Station No 9 - Springdale, Arkansas Ball Street & West Downum Roads, Springdale, AR

The Architect: (Name, legal status and address)

Miller Boskus Lack 2397 Green Acres Road Fayetteville, AR 72703

The Owner's Designated Representative: (Name, address and other information)

Wyman Morgan 201 Spring Street Springdale, AR 72764

The Construction Manager's Designated Representative: (Name, address and other information)

Sam Hollis 2002 S. 48th Street, Suite A Springdale, AR 72762

init.

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified. The Architect's Designated Representative: (Name, address and other information)

Audy Lack 2397 Green Acres Road Fayetteville, AR 72703

The Owner and Construction Manager agree as follows.

#### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

#### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

#### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 1.3 General Conditions

For the Preconstruction Phase. AIA Document A201<sup>TM</sup>–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

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#### ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

#### § 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

#### § 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

#### § 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

#### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

#### § 2.1.6 Subcontractors and Suppliers

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The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager

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shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### § 2.1.8 Extent of Responsibility

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The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

#### § 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

#### § 2.2 Guaranteed Maximum Price Proposal and Contract Time

- § 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.
- § 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.
- § 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:
  - .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
  - .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
  - .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
  - .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
  - .5 A date by which the Owner must accept the Guaranteed Maximum Price.
- § 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.
- § 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

- § 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.
- § 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.
- § 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.
- § 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

#### § 2.3 Construction Phase

#### § 2.3.1 General

- § 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.
- § 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

#### § 2.3.2 Administration

- § 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.
- § 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.
- § 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.
- § 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

- § 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.
- § 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.
- § 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.
- § 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

#### § 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

- § 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.
- § 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.
- § 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.
- § 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

- § 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
- § 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.
- § 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.
- § 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

#### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

#### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in A1A Document B133<sup>TM</sup>\_2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

# ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES § 4.1 Compensation

- § 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:
- § 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: (Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

\$5,000.00

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- § 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.
- § 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

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#### § 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)

5 % five

#### ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

#### § 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

5% of the cost of the work

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

5%

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

150%

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed ninety-five percent (95 %) of the standard rate paid at the place of the Project.

#### § 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

ltem TBD Units and Limitations

Price per Unit (\$0.00)

#### § 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. (Insert specific provisions if the Construction Manager is to participate in any savings.)

GMP will be established once all subcontractor/supplier bids are taken at a later date. Any cost savings (at the completion of the project) under the GMP will be returned to the Owner.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

#### § 5.3 Changes in the Work

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§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The

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Document of any portion of it, may result in accrete civil and critical penalties, and will be proceeded to the maximum extant possible under the latter of the proceeding of the proceeding of the proceeding of the proceeding of the procedure of the proced

Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

- § 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.
- § 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.
- § 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.
- § 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

#### ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE § 6.1 Costs to Be Reimbursed

- § 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.
- § 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

#### § 6.2 Labor Costs

- § 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.
- § 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.
- (If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)
- § 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- § 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

#### § 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

#### § 6.4 Costs of Materials and Equipment incorporated in the Completed Construction

- § 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.
- § 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

#### § 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

- § 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.
- § 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.
- § 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.
- § 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
- § 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.
- § 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

#### § 6.6 Miscellaneous Costs

- § 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.
- § 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.
- § 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.
- § 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

- § 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.
- § 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.
- § 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.
- § 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

#### § 6.7 Other Costs and Emergencies

- § 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.
- § 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.
- § 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.
- § 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

#### § 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- 2 Expenses of the Construction Manager's principal office and offices other than the site office;
- 3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

#### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### § 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

#### ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

#### § 7.1 Progress Payments

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§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 15th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than twenty (20) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

- § 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.
- § 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.
- § 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.
- § 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
  - .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;
  - .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
  - .3 Add the Construction Manager's Fee, less retainage of ten percent (10 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
  - .4 Subtract retainage of ten percent (10 %) from that portion of the Work that the Construction Manager self-performs;
  - .5 Subtract the aggregate of previous payments made by the Owner;
  - .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
  - .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.
- § 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.
- § 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.
- § 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made

1

exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract, Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

#### § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

#### ARTICLE 8 INSURANCE AND BONDS

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For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007. (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA DocumentA201–2007.)

Type of Insurance or Bond General Liability Limit of Liability or Bond Amount (\$0.00)

General Liability Automobile Liability Umbrella Liability Workers Compensation \$1,000.000 \$1,000,000 \$7,000,000 \$1.000,000

Payment and Performance Bonds

100% of the Value of the Contract

#### ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

	( ]	Arbitration pursuant to Section 15.4 of AIA Document A201-2007
(second	]	Litigation in a court of competent jurisdiction
Survey		Other: (Specify)

#### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

#### ARTICLE 10 TERMINATION OR SUSPENSION

#### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

Init.

AIA Document A133<sup>TM</sup> - 2009 (formerly A121<sup>TM</sup>CMc ~ 2003). Copyright © 1991, 2003 and 2009 by The American Institute of Architects. All rights reserved.

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User Notes:

- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

#### § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

#### § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

#### ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2007.

#### § 11.2 Ownership and Use of Documents

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 11.3 Governing Law

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Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

#### § 11.5 Other provisions:

The Milestone Project Manager will be stationed at the Milestone Main Office in Springdale, AR. Any time spent working on the project whether on site or at the Milestone Main office will be charged to the project at a rate of \$60/hr and will be included in the overall GMP.

#### ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

#### § 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction
- .3 AIA Document E201<sup>TM</sup>-2007, Digital Data Protocol Exhibit, if completed, or the following:
- A AIA Document E202<sup>™</sup>-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents:
  (List other documents, if any, forming part of the Agreement.)

This Agreement is entered into as of the da	y and year first written above.
	She a thole
OWNER (Signature)	CONSTRUCTION MANAGER (Signature)
Doug Sprouse, Mayor	Sam Hollis, President
(Printed name and title)	(Printed name and title)

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## RESOLUTION AUTHORIZING THE PURCHASE OF THE PROPERTY AT 903 Joye Street

**WHEREAS**, the City of Springdale Wouldlike to make improvements to and expand Fire Station No. 4 and

WHEREAS, the property at 903 Joye Street is adjacent to the fire station; and

WHEREAS, this property would be required for the expansion of the fire station, and

**WHEREAS**, this property is currently for sale and has been appraised for \$105,000.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the Mayor is hereby authorized to purchase the property at 903 Joye Street with funds from the Capital Improvement Project Fund for the expansion of Fire Station No. 4.

PASSED AND APPROVED this 12<sup>th</sup> day of November, 2019.

	Doug Sprouse, Mayor
ATTEST:	
Denise Pearce, City Clerk	_
ADDDOVED AS TO FORM	
APPROVED AS TO FORM:	
Ernest B. Cate, City Attorney	<del></del>

Post Office Box 1521 417 Holcomb Street Springdale, AR 72765-1521 Phone (479) 751-4510 Fax (479) 750-8104

## Springdale Fire Department

October 31, 2019

To Mayor Sprouse and Wyman Morgan;

I would like to request to place on the committee agenda the approval to expend CIP funds to purchase the home and property directly behind station 4 for future growth needs of station 4. The property is in probate and an appraisal totaling \$105,000 has been obtained and approved for sale by the court. We are requesting the funds to purchase the land from CIP funds for future use. We are requesting CIP funds to purchase instead of Bond money so that we can complete any remodel or changes as the city can expend the resources and funding. If we purchase with bond money, certain improvements would be needed at which point, we are not prepared to move forward with any plans at this immediate time. Please consider this request for the future of our total department plans with station 4.

Michael J. Irwin
Fire Chief
Springdale Fire Department



ELECTRONICALE Page # 1 of 13
Washington County Circuit Court Probate Division
Becky Lewallen, County Clerk
2019-Oct-21 11:22:03
72PR-19-636

C04D01 : 13 Page



#### LOCATED AT:

903 Joye St Springdale, AR 72762 Block 3 Lot 2 White Hills Add II

#### FOR:

Denise Stockburger, Executor

#### AS OF:

09/27/2019

#### BY:

Robin Grisso Red Brick Appraisals 1905 N Juneway Terrace Fayetteville, AR 72703 (479) 200-4154

Main File No. 16-0952 Page # 2 of 18

#### SUMMARY OF SALIENT FEATURES

Subject Address 903 Joye St  Lead Description Block 3 Lot 2 White Hills Add II  City Springdale  County Washington  State AR  No Code 72762  Census Tract 0105.10	
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	Main File No. 19-0952 Page # 3 of
Client Denise Stockburger, Executor	F4s No. 19-0952
hoo adve at	*
Springdale  Dwner Leo & Ola Hudson Connie Ferguson	Sounity Washington State AR Zin Code 72762
APPRAISAL AND REPORT IDENTIFICA	TION
This Report is and of the following types:	
2001 ACMAR	
Appraical Report (A written report prepared under Stand	lards Rule 2-2(a) , pursuant to the Scope of Work, as disclosed elsewhere in this report.)
Restricted (A written report prepared under Stand	tards Rule 2-2(b) , pursuant to the Scope of Work, as disclosed elsowhere in this report,
Approximal Report restricted to the stated intended use by	the specified client or intended user.)
Comments on Standards Rule 2-3	
I certify that, to the best of my knowledge and belief:  - The statements of fact contained in this report are true and correct.	
- The reported analyses, opinions, and conclusions are limited only by the r	reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional
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Main File No. 18-0852 | Page # 4 of 13 Stockburger/Hudson

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			al Assessments: S O	Borrower fit applicables:	ACTION NAME OF	(E) FILE			
Project Type:	PUD 'Sandemin	Hudson, Connie F	erguson (a Gher (describe)	Occupant: Owner	Tenant Vecent	E Manufactured Mousing			
Market Area flame:	Springdale	91	o color (describe)	Subdivision Map Reference: 22220	HOArs 0	per year per mon			
भिन्न इसमा हा बहुद्वतायम् भाग	pressi is to develop an opinion of		Market Yalus (au dalined), or	other type of value (do		insus Treet. 0105.10			
ible report rollects the	following value (if not Conent, se	ae commanis);		ispection Onto is the Effective Date)	Hatrosn	solive Prospactive			
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nichopo 053,	o assist the owner(s)	& Client in determ	rining a Market Valu	e of the property for a	possible sale.	****			
ntended User(s) (by n	ama or lyen)	uina Dr. 11							
2.00	e Stockburger, Exec	nise Stockburger,	Executor for Leo & (	Ola Hudson, her assigr	ns and/or successors	S. 11.21			
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				style. There is heavy only entert					
		ded to continue the	at way for the foresa	as, employment, entert eable future. Interest of	ainment, shopping and	other type services.			
available for t	his type of property.			suare rathre. interest in	area are row and ruete	are mortgages			
544				3		Tale.			
1	Man Ita		5 5 5 5	AT RE DATE	1000	400			
Amensions; :10	O.C.L. Trail					Marin Marin			
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ve CC&Rsi applicable		Unknewn R	ava the decuments been review		conterming (grandfalloceed)	Slagal j No zoni			
ilghost & Sast Use as	Impraved: 1 Pr		Other mag (explain)	191 185	No Ground Root (if applicable)	3 /			
this report.		<b>4</b> 600 8	-11	6 - H- 3	Y 12	as of the effective date of			
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	-	Enlation Description	***************************************			100 1 1001			
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Main File No. 19-0852 Page # 5 of 13 Stockburger/Hudson RESIDENTIAL APPRAISAL REPORT 19-0952 alyais of sale wander bistory and/or any coursed agreement of sale meling No prior sales or transfers of the subject was found during the research for the time periods requested. Price Seurce(s) 2nd Pitter Subject Sale/Transfer Date rice: SALES COMPANISON APPROACH TO VALUE (II 6 SUBJECT COMPARABLE SALE # 2 903 Joye St 3302 Scott Ln 1101 Alicia St 600 Andy St Springdale, AR 72762 Springdale, AR 79762 Springdale, AR 72762 Springdale, AR 72762 0.15 railes NW Sannyone, 0.31 miles SW 0.24 miles NW Stie Prisa 120,000 99.23 /sq.ii. 115,500 100.98 /sq.ft 102.83 /sq.ft. Data Source(s) .... Client WLS#1101423 MLS#1100553 MLS#1103941 erilleation Seurco(s CoRecs, Observ CoRecs, Observ CoRecs, Obstv 0550891108 VALUE ADJUST CaRecs, Oberv 4 (-) 3 Adjust + (-) S Adjust. ales or Figureta Not Disclosed Not Disclosed Not Disclosed Date of Sale/Time 03/08/2019 02/19/2019 03/06/2019 Rights Appraised Fee Simple Fee Simple Fee Simple togation Fee Simple Good Good 13,875 sf 12,632 si 10,454 sf 10,890 sf Average Average Average Design (Style) Average Ranch Ranch Ranch uality of Genalmet Ranch Average Average Average Average 46 41 0 39 Fair air Avarage. Wove Grade -5.000 Average Rdmox ( Dathe Total Boiss Dates 6 3 1.1 Total Tutal Salams S 3 § 1 3 Regen Could 4.1 2.0 1,144 suit -2,000 6 3 esa Living Area -2,000 1,038 sq.ft Basomoni & Firlahse None Mone None eonas Debay Grade Forational Ottley Good Good fisaling/Cooling FWA CAC New FWA CAC New FWA CAC -3,500 FWA CAC Encopy Efficient Hans Average Vew Roof -5,000 Average Average Barage/Carport 1CarGaraceAlt 2CarGarage Art l CarGarageAtt -2,500 1CarGarageAtt COMPARISON AIMMOACH FrantCov/3kPatCo rentCov/EkPatOp +1,500 FrontCov/akPatOp +1,500 FrontCov/SkPabOp +1.590 -11,500 -5,500 of Comparables 109,500 The subject property is typical for the neighborhood in size and condition. Several of the homes have some. Comparable 1 has a new roof and new HVAC. The interior is of similar condition as the subject. Comparable 3 is dition and has a new HVAC system. It also has a 2 car garage. Comparable 3 is superior in condition. All 3 comparables are 110,000 in the subject's neighborhood. The appraiser believes them to be the best comparables available at this time. The form a good bracket for an indicated market value for the subject property. Indicated Value by I sies Comparison Approach \$

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Main File No. 19-0952 | Page # 7 of 13

#### Subject Photo Page

City	Denise Stockburger, Executor 903 Joye St Springdale Leo & Ola Hudson;Connie Ferguson	1572 1672	County	VVashington State AR Ep Code 72762	
	, 9, 4,000	-			1



#### Subject Front

ang Joha 25	
Sales Price	
Gross Living Area	1,099
Total Rooms	6
Total Dedrooms	3
Total Bathrooms	1.1
Lecation	Good
View	Avarage
Site	13,875 sf
Quality	Average
Age	46



#### Subject Rear



#### Subject Street

#### Interior Photos

			* - 0 : 410102					
it ity Address	Denise Stockburger, Executor							
- :	903 Joye St	150	T 10 N=10 (0 )	100 Aug 10	100	0 1	100	
er .	Springdale Leo & Ola Hudson;Connie Ferguson	County	Washington	5 E	_State_AR	Zia Gode	72762	
- 1								- 93



Laundry



Kitchen



Dining



Living Room



Bathroom



Bedroom



Bedroom



Bedroom



Half-Bath

Main File No. 19-0952 Page # 9 of 13

#### Gomparable Photo Page

Client _	Denise Stockburger, Executor	··•
Property Address	903 Joye St	
City	Springdale County Washington Sulh AR In Code 72762	
Owner	Leo & Ola Hudson:Connie Farguson	



#### Comparable 1

3302 Scott Ln Prox. to Subject Sale Price 0.24 miles NVV 103,000 1,038 Gross Living Area Total Booms Total Budrooms Total Bathrooms Location Good Avarage 12,632 sf View Site Quality Average 42 Age



Comparable 2 1101 Alicia St Prox. to Subject
Sale Price
Gross Living Area
Total Rooms
Total Bedrooms 0.15 miles MW 120,605 1,167 Total Balhrooms 2.0 Lucation Goed Average 10,454 st Vlew Site Quality Average 41 Age



#### Comparable 3

600 Andy St Prox. to Subject 0.31 miles SW 116,500 Sale Price Gross Living Area 1,144 6 3 2.0 Total Rooms Total Bedrooms Total Bathrooms Location Good Average 10,890 sf View Sits Quality Avarage 39 Age

Main File No. 19-0952 Page # 10 of 13

#### **Location Map**

Glient	Denise Stockburger Executor							 
Properly Address	903 Joye St				16.0	- (-)		}
	Springdale	Colenty	Washington	2" H H	State AD	Zio Gode		
Owner.	Leo & Ola Hudson;Connie Ferguson			39 -		5/0 0000	72762	 

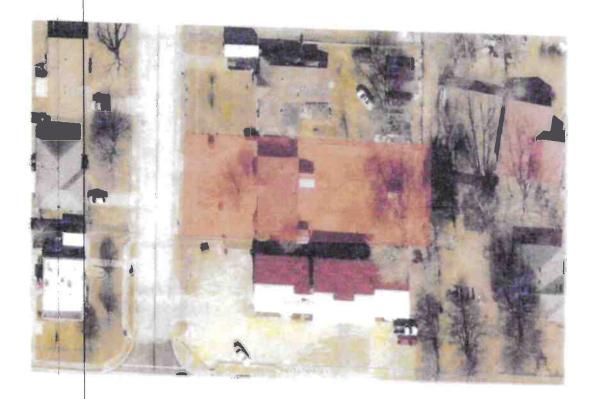


Main File No. 19-0052 Page # 11 of 13 **Building Sketch** Client Property Address Denise Stockburger, Executor 903 Joye St Springdale Leo & Ole Hudson:Connie Ferguson Chy County Washington State AR Zip Gede 7,2762 Owner 13.6' 54.61 Laundry / Utility Bath (half) Master Bedroom 76.16 Sq ft] Kitchen Bath 1 Car Attached [-288.32 Sq ft] 21,2: Bedroom Living Bedroom 13.6 54.6 First Floor [1174.96 Sq R] Living Area 1 Cor Attached First Floor Laundry / Utility Total Living Area (Roumled): -265.32 Sq ft 1463.28 Sq ft -75.16 Sq ft 1600 Sq ft

Main File No. 19-0952 Page # 12 of 13

#### Aerial Map

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Client	Denise Stockburger, Executor	Company of the last		_				
Property Notiess	903 Joye St					540 45	÷ =	
City	Springdale	County	104-11	T x 3	Her 25 II	And 1844 18 44		
Owner	Leo & Ola Hudson Connie Ferguson	/	Washington	9 19	State	AR Zip Code	72762	1
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Main File No. 19-0952 / Page # 13 of 13

#### Appraiser's License

Client	Denise Stockburger, Executor						-						
Property Address	903 Joye St	1 1					10	***	**-		E.	=	140
City	Springdale		Courty	Washing	hous -	* 19	*	State Arb		Zie Code			
Owner	Leo & Ola Hudson Connie Ferguson		- 19	A seasoning	OOH	-		AR .		op suse	7276	2	



Garaga et CR 3906

has complied with the requirements of Arkaseas Code Section 17-14-281 et seq.; and is the notion of a valid certificate. This sand is for identification guryaless only.

8/36/2026

Evaluation Dalls Obstance

|--|

#### AN ORDINANCE TO WAIVE COMPETITIVE BIDDING FOR THE PURCHASE OF EXTRICATION EQUIPMENT FOR THE FIRE DEPARTMENT

**WHEREAS**, the Springdale Fire Department plans to purchase some extrication equipment with Act 833 funds in January of 2020, and

**WHEREAS**, to increase safety the Fire Chief would like to purchase equipment similar to the equipment we presently have, and

WHEREAS, this equipment is only available from one source, and

**WHEREAS**, Arkansas Code 14-58-303 states, "The governing body, by ordinance, may waive the requirements of competitive bidding in exceptional situations where this procedure is deemed not feasible or practical";

### NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that

<u>Section 1.</u> This Council finds that due to the sole source provider, it is not feasible or practical to use competitive bidding and competitive bidding on the purchase of the extrication equipment from Precision Rescue is here by waived for an amount not to exceed \$28,935 plus freight and sales tax.

Section 2. Emergency Clause. It is hereby declared that an emergency exists, and this ordinance being necessary for the immediate preservation of the health, safety, and welfare of the citizens of Springdale, Arkansas, shall be effective immediately upon passage and approval.

**PASSED AND APPROVED** this 12<sup>th</sup> day of November, 2019.

	Doug Sprouse, Mayor
ATTEST:	
Denise Pearce, City Clerk	<del></del>
APPROVED AS TO FORM	
Ernest B. Cate, City Attorney	

#### **Beth Parnell**

From: Mike Irwin <mirwin@springdalear.gov> Sent: Wednesday, October 30, 2019 11:23 AM

To: Doug Sprouse; Wyman Morgan; Amelia Williams

Jim Vaughan; Ron Skelton Cc: Subject: Committee agenda items

**Attachments:** 20191021-Leo Hudson Appraisal-Filed.pdf; springdale amkus-para quote 4-19 (1).docx;

Ion Act 833 request.doc; Purchase home behind station 4.doc

Mayor Sprouse, Police and Fire Committee Chair Amelia Williams and Wyman,

Please find attached our request for expenditure of Act 833 funds for the purchase of a new set of extrication tools, and also the request for CIP funding to purchase the property behind Station 4 for which we have been offered by attorney dealing with probate. Find attached both the appraisal and quote for the extrication tools. Thank you for your consideration.

### Michael J.Irwin

Fire Chief Springdale Fire Department







#### CONFIDENTIALITY NOTICE:

The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.

### **PRECISION RESCUE**

5667 Bear Valley Lane Harrison, Arkansas 72601 (870) 715-2191



Springdale Fire Dept Amkus/Paratech quote 4/18/2019

Invoice Date Invoice #

Item	Serial # Description		No Item	Price/ Unit	Total
IS280L		28" ION Flexvolt Spreader w/lighted handle	1		10,300.00
IC550		ION Flexvolt cutter w/rotating handle and light	1		8,600.00
ITR230		ION Flexvolt ram	1		7,300.00
Tips		Extended reach tips (pair)	1		890.00
Ext kit		3 pc ram ext kit 10" 18" 27"	1		1,050.00
Chain		Quick adj chain pkg for spreader	1		795.00
		Total as shown for tools			28,935.00
		Freight and tax not included			

RESOLU	JTION NO.	

#### A RESOLUTION AUTHORIZING THE RENOVATIONS OF FOUR (4) BATHROOMS IN THE SPRINGDALE PUBLIC LIBRARY

WHEREAS, Library Director Marcia Ransom desires to remodel four (4) bathrooms in the Springdale Public Library; and

WHEREAS, Hight Jackson has been retained as architects on this remodel; and

WHEREAS, funds have not been appropriated for the cost of this remodel.

## NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that

**Section 1**. The remodeling of four (4) bathrooms in the Springdale Public Library is hereby approved with a cost of \$200,000 to be paid out of the CIP Fund.

**Section 2**. The Library Director is hereby authorized to retain Milestone Construction Company as the general contractor to oversee the remodeling.

PASSED AND APPROVED this 12<sup>th</sup> day of November, 2019

ATTEST:	Doug Sprouse, Mayor
Denise Pearce, City Clerk	
APPROVED AS TO FORM:	
Ernest B. Cate, City Attorney	

#### Wyman Morgan

From:

Marcia Ransom < MRansom@springdalelibrary.org>

Sent:

Wednesday, October 30, 2019 8:18 PM

To:

Subject:

Wyman Morgan Re: Library Restrooms

Okay. Gail from Hight Jackson and Scott from Milestone will attend to answer questions.

Thanks.

Marcia

Get Outlook for iOS

From: Wyman Morgan < wmorgan@springdalear.gov>

Sent: Wednesday, October 30, 2019 11:42:19 AM

To: Marcia Ransom < MRansom@springdalelibrary.org>

Subject: Re: Library Restrooms

I will try to get it on Monday night is agenda.

Sent from my iPad

- > On Oct 30, 2019, at 11:35 AM, Marcia Ransom < MRansom@springdalelibrary.org > wrote:
- > It's in the \$180,000 range for the four public restrooms. It could come down a little with some minor adjustments we looked at this morning.

> ----Original Message----

- > From: Wyman Morgan <<u>wmorgan@springdalear.gov</u>>
- > Sent: Wednesday, October 30, 2019 10:13 AM
- > To: Marcia Ransom < MRansom@springdalelibrary.org>
- > Subject: Re: Library Restrooms

> What is the bathroom estimate? I will get you a name for air quality tomorrow.

> Sent from my iPad

# A RESOLUTION AUTHORIZING THE EXECUTION OF AN ENGINEERING SERVICES CONTRACT AMENDMENT FOR DESIGN OF AN EXTENSION OF THE SPRING CREEK TRAIL

WHEREAS, the City of Springdale is planning an extension of the Spring Creek Trail, and

WHEREAS, using the procurement procedures required by State Law, the program management team has selected McClelland Consulting Engineers as the most qualified firm;

WHEREAS, the City of Springdale wishes to assist in the extension of the trail project across the Arkansas Game & Fish Commission Nature Center property;

**WHEREAS,** the Northwest Arkansas Regional Planning Commission has provided a \$500,000 TAP Grant and the Walton Family Foundation has provided a \$760,000 Trail Grant to the City of Springdale to fund this project;

WHEREAS, the McClelland Consulting Engineers have agreed to add the AGFC portion of the trail to the design scope of the original Spring Creek Trail design agreement for an additional fee not exceed \$115,000 for Geotechnical Investigations, Right-of-Way Surveys, Property Records Search, and Easement Document Preparation. Construction Services are not included in this contract. Total project design fee shall not exceed \$166,375.

WHEREAS, final design/bid documents are due by March 31, 2020.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that

Section 1. Expenditures for this contract will be paid from the 2019/2020 Street Fund budget.

Section 2. The Mayor and City Clerk are hereby authorized to execute an engineering services contract amendment with McClelland Consulting Engineers for design of an extension of Spring Creek Trail.

**Section 3**. The Mayor is hereby authorized, for this project, to institute eminent domain proceedings in any instance that an agreement has not been reached with the property owner regarding the amount of just compensation to be paid for the acquisition of property and easements. All settlements proposed by the Mayor that exceed the appraised value will be presented to the City Council for approval.

**Section 4.** The Mayor is hereby authorized to execute change orders to this contract provided the cumulative total does not exceed 10% of the amended contract price.

PASSED AND APPROVED this	day of November, 2019
ATTEST:	Doug Sprouse, Mayor
Denise Pearce, CITY CLERK	<u>-</u>
APPROVED AS TO FORM:	

#### Trail Budget - 093019

#### Trail Budget

			2019		2020	2021
G/L Code	Description					
201-0206-431.40-06	Engineering / Trails	\$	(42,804.68)			
201-0206-431.81-04	Appraisal Fees / Trails	\$	4,000.00			
201-0206-431.80-11	Acquistion / Trail Easements	\$	36,930.00			
201-0206-431.83-02	Utility Relocation / Trails	\$	(5,200.00)			
201-0206-431.40-07	Material Testing - Trails	S	4.106.50			
201-0206-431.82-02	Trails Construction	\$1	,592,733.35			
201-0206-431.84-02	Furnishing & Equipment / Trails		4,000.00			
Current Balances			,593,765.17	Ś	- ¢	
			, , , , , , , , , , , , , , , , , , , ,	7	Ψ	

Trail Cost		2019	20	020	2021
Misc Trail obligations	Ś	150,000.00	2.0	320	2021
Spring Creek - Engineering	\$	60,391.00	\$ 105,984.	00	
Spring Creek - Appraisal & Acquistion	Ψ	00,331.00	\$ 52,500.		
Spring Creek -Construction			\$ 1,951,987.		
Dean's Trail 2 & 3A - Engineering	\$	254,960.00	7 1,951,967.	00	
Dean's Trail 2 - Acquistion	Ψ.	23 1,300.00	\$ 282,100.	00	
Dean's Trail 2 - Construction			\$ 1,540,000.		
Dean's Trail 3A - Acquistion			\$ 630,800.		
Dean's Trail 3A - Construction			\$ 1,000,000.		5 1,869,000.00
	\$	465,351.00	\$ 5,563,371.		

Trail Revenue	2,019	2,020	2,021
Spring Creek / NWARPC TAP Grant Spring Creek / WFF Grant Dean's Trail 2 / ArDOT TAP Grant Dean's Trail 2 / ArDOT TAP Grant Dean's Trail 3 / ArDOT TAP Grant Dean's Trail / WFF Grant City Contribution	\$ 380,000.00 \$ 1,000,000.00	\$ 500,000.00 \$ 500,000.00	\$ 500,000.00 \$ 1,000,000.00 \$ 1,000,000.00
	\$ 1,380,000.00	\$ 3,630,000.00	\$ 2,500,000.00
Cash Flow	\$ 2,508,414.17	\$ 575,043.17	\$ 3.075.043.17

### AMENDMENT TO OWNER- ENGINEER AGREEMENT Amendment No. 1

#### 1. Background Data:

a. Effective Date of Owner-Engineer Agreement: February 14th, 2019
b. Owner: The City of Springdale
c. Engineer: McClelland Consulting Engineers, Inc

d. Project: Spring Creek Trail Extension; To AGFC Property Via 40th St

#### 2. Description of Modifications:

The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows: shall perform or furnish the following Additional Services:

<u>Revise</u> PROFESSIONAL SERVICES AGREEMENT, Paragraph 3, Page 1 as follows:

The project includes the extension of Spring Creek Trail by approximately 4,650 linear feet (0.88 mile) as a 12' wide concrete trail for approximately 2,600 linear feet from the existing western end of Spring Creek Trail westward to 40th Street, as well as approximately 2,050 linear feet of trail extending due west, commencing at 40th Street and then routing through Arkansas Game & Fish Commission (AGFC) property to a point of termination with the AGFC trail system, and includes an at-grade crossing of the roadway. The project design scope will include topographical and geotechnical investigations, trail design, Corten steel pedestrian bridges, bicycle and pedestrian pavement markings and signage and franchise utility coordination as needed. See Exhibit #1 & #2 for proposed alignment of project.

- b. Revise ATTACHMENT 'A', SCOPE OF SERVICES, as attached.
- c. Revise ATTACHMENT 'B', SCHEDULE, as attached.
- d. Revise ATTACHMENT 'D', COMPENSATION, as attached.

### 3. Agreement Summary (Reference only)

a. Original Agreement amount:	\$ 51,275.00
b. Net change for prior amendments:	\$ 0.00
c. This amendment amount:	\$ 115,100.00
d. Adjusted Agreement amount:	\$ 166,375.00

Amendment. All provisions of the	to modify the above-referenced Agreement as set forth in this Agreement not modified by this or previous Amendments te of this Amendment is
OWNER:	ENGINEER:
City of Springdale	McClelland Consulting Enginners, Inc
Ву:	Ву:
Title:	

### ATTACHMENT 'A' Amendment No. 1

#### SCOPE OF SERVICES

## CITY OF SPRINGDALE, ARKANSAS SPRING CREEK TRAIL EXTENSION; TO AGFC PROPERTY Via $40^{th}$ STREET

#### 1) Scope of Project

#### PROJECT DESCRIPTION:

#### Add wording:

- a) The project includes;
  - (1) West Portion of Trail (AGFC Property)
    - extension of Spring Creek Trail for approximately 2,050 linear feet; 12' width concrete, multi-use trail beginning at the east side of the existing 40th Street alignment, running west through gently undulating open field of Arkansas Game & Fish Commission property (AGFC, future location of NWA Nature & Education Center), terminating at the western end at a point of connectivity to AGFC trail,
    - ii) a 16' width, approx. 50' clear single span premanufactured Corten steel bowstring bridge,
    - iii) wood fencing,
    - iv) associated storm drainage design,
    - v) Rapid Flashing Beacon (RFB) to 40<sup>th</sup> Street crossing.

#### Revise wording:

- (2) East Portion of Trail (Extension to 40th St)
  - i) extension of Spring Creek Trail for approximately 2,600 linear feet; 12' width concrete, multi-use trail beginning at the current western end of Spring Creek Trail, located adjacent to the Springdale Wastewater Treatment Facility, running west through a combination of open field owned by SWU, dense wooded areas and heavily varying rocky terrain, terminating on the eastern side of existing 40th Street alignment.
  - ii) a 16' width, approx. 114' clear single span premanufactured Corten steel bowstring bridge,
  - iii) retaining walls,
  - iv) wood fencing,
  - v) associated storm drainage design.

## ATTACHMENT "B" Amendment No. 1

#### SCHEDULE

## CITY OF SPRINGDALE, ARKANSAS SPRING CREEK TRAIL EXTENSION; TO AGFC PROPERTY Via $40^{th}$ STREET

Note that the durations shown on the project schedule are based on actual Working Days NOT Calendar Days.

Revise schedule as follows:

ASK NAME	START	FINISH	DURATION
- 190109 Spring Crean Trad Extension - Phase   (To Admir & TriAGRC)	09/29/10	Therefore Martings Access	
Contract Amendment Approved by City Council	300000000000000000000000000000000000000	01.73.21	345d
Topographic Survey	10/22/19	10122/19	1.5
Dista Proceeding	09/23/19	10/11/19	* \$ 5
(a) Design Frase	។ ម៉ូ កា ឆ្នាំ ។ 	7272.0.200.0.20	531
(F) 15% Cezign Submittel	11/04/19	2010139	4 5
15% Design	11/04/19	12/08/19	250
City & ASFC Review	11/0/11/12	11/22/16	32
tel 80% Design Submitted	11/25/15	12,75115	
60% Design	12/06/19	02/03/20	6, 2, 5
	12/08/19	01/24/20	484
Property Essevant Documents	01/18/00	01/24/20	
City & AST C Review	01/24/20	02/08/20	100
e: 90% Design Submitte)	02/07/20	02/28/21	2 8 8 2 2 2
90% Design	32/37/20	92/20/20	180
City & AGFC Review	02/20/20	02/28/20	30
Freiterly Acquisitions	21/27/20	03/31/20	470
Finaliza March Commitment	03/31/20	23/3/423	10
El Sad Decuments	02/27/20		245
Final Design Flans	02/27/20	03/3/020	240
Specifications	13/13/20	512121	199
Committee/Cost Estimate	03/05/20	03/34/20	197
Shirl Documents Submitted to City	33/03/20	03/31/23	190
Advertisa for Bida	64/05/20	04/22/20	143
End Copening	04/22/20	34/22/20	1.8
El Construction Phase; AGEC	04.28/20	01.715/21	183
Cauncil	04/28/20	04/28/20	10
Notice of America	04/29/20	04/29126	10
Sign Contracti Notice to Process	08/14/20	08/14/20	18
Construction - West Phase (AGEC)	96/15/20	00/27/20	
Construction - East Phase (to 40m)	05 15 20	12/24/23	
Substantist Completion - West Phase	09/28/20	09/25/20	10
Substantial Completion - East Pages	64148424	01/15/g/1	tu fg

#### ATTACHMENT "D" Amendment No. 1

#### COMPENSATION

#### CITY OF SPRINGDALE, ARKANSAS SPRING CREEK TRAIL EXTENSION; TO AGFC PROPERTY Via 40th STREET

### Revise compensation as follows:

CITY shall pay ENGINEER for Basic Services and Reimbursable Expenses rendered an amount not exceeding \$166.375.00.

<u>\$ 19.750.00</u>

#### Basic Design Services:

Conceptual Development

<ul> <li>Design Phase</li> </ul>	\$ 98.075.00
Surveying & Property Documents:	
Topographic Surveys	\$ 27.375.00
<ul> <li>ROW &amp; Easements, Boundary Resolution</li> </ul>	<u> </u>
Geotechnical Investigations:	\$ 12.125.00
Total Design Related Services Fee	\$164,825.00

CITY shall pay ENGINEER the actual cost of Reimbursable Expenses incurred in connection with Basic and Additional Services. The estimated amount of Reimbursable Expenses to be incurred in connection with Basic Services is:

WACO Title Searches Utility Locates (estimated) Miscellaneous, inc. mileage	\$750 \$500 \$300
---	-------------------------

Subtotal, Reimbursable Expenses \$1,550.00

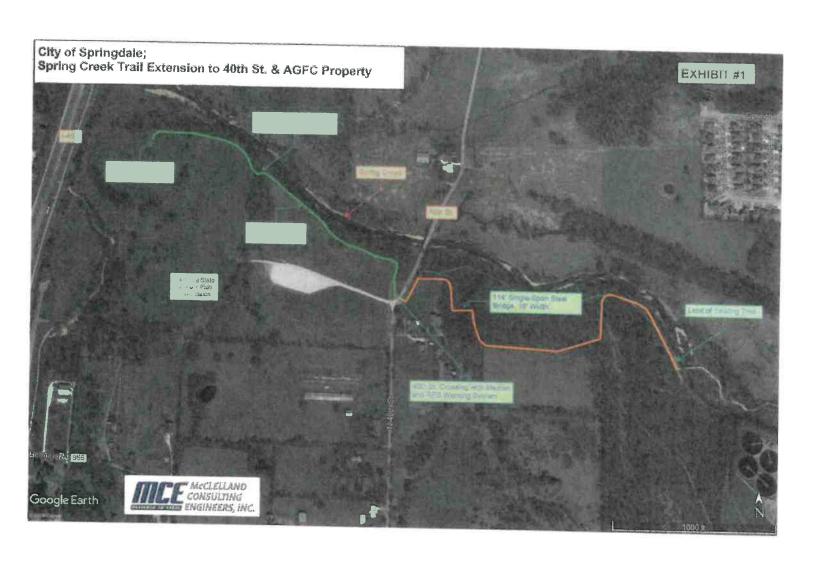


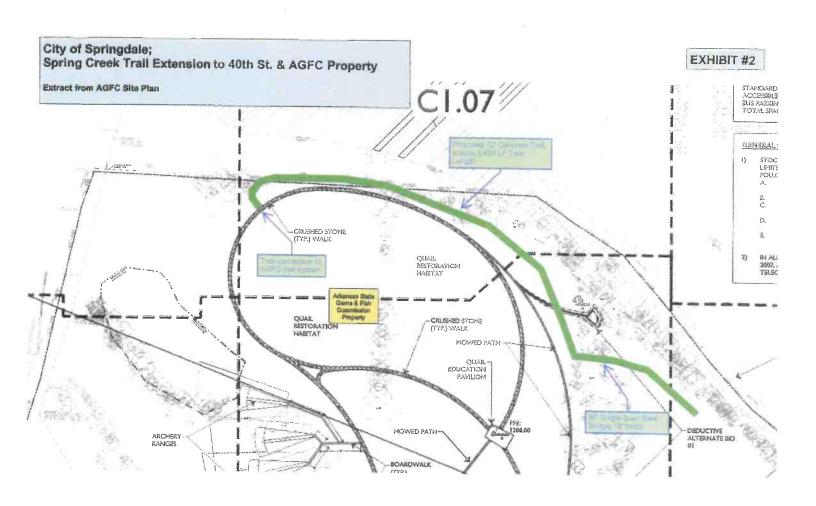
#### 2019 McCLELLAND CONSULTING ENGINEERS, INC. \*STANDARD HOURLY RATES

As of January 1, 2019

Chief Draftsman	\$95 - \$110
Clerical	\$45 - \$75
Construction Observer	\$70 - \$130
Draftsman	\$65 - \$95
Environmental Scientist/Designer	\$105 - \$120
Geotech Engineer	\$85 - \$150
HR/Payroll Admin	\$75-\$100
Landscape Architect	\$90 - \$130
Media Specialist	\$80 - \$100
Principal	\$160 - \$230
Project Accountant	\$70 - \$145
Project Designer	\$70 - \$140
Project Engineer	\$120 - \$175
Project Manager	\$120 - \$200
Registered Land Surveyor	\$95 - \$140
Soils Lab Technician	\$50 - \$95
Specification Writer	\$50 <b>-</b> \$75
Sr. Project Manager	\$140 - \$240
Survey (2 man or Robotic) Crew	\$115 - \$160
Survey (3 man) Crew	\$135 - \$180
Survey Field (1 Man or Rodman)	\$45 - \$95
Survey GPS	\$75 - \$130
Survey Technician	\$65 - \$95
Water Lab Supervisor	\$70 - \$90
Expenses	@ Cost
Mileage	.58/mi
	***************************************

<sup>\*</sup> Standard Hourly Rates may be adjusted annually in accordance with the normal salary review practices of McClelland Consulting Engineers.





RESOLUTION NO.
A RESOLUTION AUTHORIZING THE EXECUTION OF A CONSTRUCTION OBSERVATION SERVICES CONTRACT FOR THE MAPLE STREET EXTENSION PROJECT (18BPS2)
WHEREAS, the City of Springdale is planning an extension of Maple Avenue, and
WHEREAS, using the procurement procedures required by State Law, the program management team has selected McClelland Consulting Engineers as the most qualified firm;
WHEREAS, the McClelland Consulting Engineers has proposed a construction observation services agreement for an amount not to exceed not exceed \$56,496.00.
NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that
Section 1. Expenditures for this contract will be paid from the 2018 Street Bond Fund.
Section 2. The Mayor and City Clerk are hereby authorized to execute a construction services contract with McClelland Consulting Engineers for the Maple Street Extension project.
Section 3. The Mayor is hereby authorized to execute change orders to this contract provided the cumulative total does not exceed 10% of the amended contract price.
PASSED AND APPROVED this day of November, 2019
Doug Sprouse, Mayor  ATTEST:
Denise Pearce, CITY CLERK
APPROVED AS TO FORM:
Ernest B. Cate, CITY ATTORNEY



1810 N. College Avenue P.O. Box 1229 Fayetteville, AR 73703/72702-1229 479-443-2377/Fax 479-443-9241 www.mee.us.com

October 17, 2019

City of Springdale

201 Spring Street
Springdale, Arkansas

ATTN: Mr. Ryan Carr. P.E.

Senior Project Manager

RE: Proposal for Construction Phase Services

Maple Avenue Extension Project

Springdale, Arkansas

Dear Mr. Carr,

We are pleased to present a Proposal for Construction Phase Services relevant to the planned Maple Avenue Extension project located in Springdale, Arkansas.

The information on the following pages provides further detail regarding the anticipated construction observation, engineering input and general coordination scope on the project. This includes details of scope, required activities, responsibilities, expected time spent onsite, and other anticipations which are integral to the proposed not-to-exceed fee.

### Site Description

The project site is located in Springdale, Arkansas. Based on the provided CD set dated 8/27/19 and our general understanding of the project, the scope consists of the removal of various existing civil elements to implement new asphalt and concrete pavements and other civil elements towards the renovation and streetscape improvements of Maple Avenue, Holcomb Street, and Water Street.

### **Project Description**

Based on the street improvements report, we understand the project scope to include the extension of Maple Avenue from Holcomb Street to Park Street, improvements along Maple Avenue, and a new section of roadway along Maple Avenue. The proposed roadway is to consist of one (1) lane in each direction with a continuous center turn-lane and a five (5) feet wide sidewalk on one side of the roadway and a 10 feet wide walking trail along the other side. The street improvements will also include an at-grade crossing of an existing single-track railroad. The project will have a total of approximately 2,000 linear feet of new and improved roadways.

If any of the anticipated or assumed information is incorrect, please allow us to make appropriate revisions to the proposed scope of work prior to construction.



### Maple Avenue Construction Phase Services Mr. Ryan Carr — City of Springdale

October 17, 2019 Page | 2

### Scope of Work

To better your understanding of our associated fees, we have presented a summary of the responsibilities related to construction observation services that we anticipate on the project.

#### **Construction Observation Services**

Based on the provided construction schedule of 10 months and giving consideration to the nature of the construction work, we envision that 25% to 40% of weekly time will be required to perform construction related services for the duration of the project. Additionally, an Engineer and/or Construction Observer will be required to attend monthly project progress meetings, which will be chaired by the City of Springdale Engineering Department. MCE also understands that the City will coordinate as-built/mark-up of drawings during construction and that electronic documentation of mark-ups will not be required on this particular project. The City will also be responsible for coordination of utility relocation planning and operations. MCE expects to gain adequate project-specific knowledge of utility relocation operations by attending a meeting on the subject and through general correspondence with the City regarding these elements.

MCE plans to utilize a combination of PlanGrid and Dropbox to manage construction-related services on the project. MCE also intends to utilize Bluebeam for coordination of PDF documents with the City.

The expectations and responsibilities of MCE as they relate to construction phase services will include the following:

- Attend a preconstruction conference, monthly progress meetings and other meetings as requested by the City. The City shall schedule dates of all project related meetings.
- Furnish a qualified engineer to make site visits at appropriate intervals to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the contract documents. In performing these services, the Engineer shall have no control over, nor responsibility for, the Contractor's means, methods, sequence, techniques or procedure in performing the work, or for safety programs in connection with the work. These are solely the responsibilities of the Contractor, who is also responsible for complying with all health and safety precautions as required by any regulatory agencies.
- Furnish the services of a Construction Observer for onsite construction observation. The authority and duties of the Construction Observer shall be limited to examining the materials furnished, observing the construction work in progress, and reporting the findings. Based on the provided construction schedule of 10 months and having given consideration to the nature of the construction work, we envision that between 25% and 40% of weekly time will be required to perform construction related services for the duration of the project. It is expected that construction observation services will include items such as onsite subgrade recommendations/ proof-roll observations, compiling records of construction progress including daily reports, management of construction-related issues and documenting accordingly, tracking submittals/RFIs/ESIs, and coordinating/assisting with needed construction materials testing services such as concrete and subgrade testing.

### Maple Avenue Construction Phase Services

Mr. Ryan Carr - City of Springdale

October 17, 2019
Page | 3

- Engineer will use the usual degree of care and prudent judgement in the selection of a competent Construction Observer. Engineer will also use diligence to see that the Construction Observer is on the job to perform his/her required duties.
- MCE will consult with and advise the City and issue construction related instructions to the Contractor where requested by the City.
- Construction Observer shall work with the Contractor in compiling monthly pay applications.
- MCE representatives will attend a final inspection of the project with the City's representatives. The
  inspection will be for conformance with the project design and compliance with the contract documents.

Considering the expectations and responsibilities listed above, we propose to perform construction phase services per the roadway project scope detailed in this Proposal for a Not-to-Exceed Amount of \$56,496.00, including a 10% contingency. This cost is the sum of 587 man-hours associated with the construction for the following employee classifications and hourly rates:

- Construction Observer \$80/hour @ 507 hours
- Project Engineer \$135/hour @ 80 hours

#### Reimbursable Expenses

Mileage associated with construction observation services is considered a reimbursable expense under the current proposed scope of work and will be charged at a rate of \$0.58 per mile. Additionally, MCE anticipates the purchase of several software licenses to satisfy the project requirements. An estimated reimbursable software-related license fee of \$2,000 will be included in the total fee.

Estimated Cost of Reimbursable Expenses: \$3,500.00

### **Extension Consideration for Additional Work Requests**

MCE understands that this document may serve as a basis for future agreements and work requests for similar construction phase services on other City of Springdale projects. As such, a time extension of up to 24 months may be added to this proposal agreement as needed to coincide with relevant additional work, provided that the work has similar scope and contractual elements.

Our estimated number of man hours for construction phase services is based on our experience on projects in the area with similar scope and size. Our fees are directly related to the time spent onsite and in project-related activities by MCE representatives. If the project scope or timeline varies after submittal of this document and prior to construction, please allow for the review/revision of this document.

# **Maple Avenue Construction Phase Services**Mr. Ryan Carr — City of Springdale

October 17, 2019 Page | 4

We appreciate the opportunity to submit this proposal for construction phase services relevant to the Maple Avenue Extension project located in Springdale, Arkansas. Please contact us with any questions or concerns that you might have regarding the information contained in this proposal.

Sincerely,		ri.
Steven J. Head, P.E. Principal / Construction Related Service	Kevin Be	aumont ident / Transportation Department Head
W W		
McClelland Consulting Engineers, Inc. consisting of four (4) pages.	., is authorized to proceed in accorda	ance with this Letter of Proposal,
ă.		
Signature	Title	Date

THOOT	*****	
RESOL	<b>UTION N</b>	Ю.

### A RESOLUTION EXPRESSING THE WILLINGNESS OF THE CITY OF SPRINGDALE TO UTILIZE FEDERAL FUNDING FOR THE FOLLOWING CITY PROJECT:

### Dean's Trail Ph.3

WHEREAS, the Arkansas Department of Transportation has recently approved Fixing America's Surface Transportation Act (FAST) funds for the project at the following Federal and City participating ratios, up to the maximum Federal-aid available:

Type Work	Work Phase	Federal %	City %
Construction of City Project	Project Design	0	100
	Right-of-Way	0	100
	Utilities	0	100
	Construction	80	20
	Construction Engineering	0	100

WHEREAS, the currently approved funds are to be used for project construction, and

### NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, THAT:

SECTION I: The City will participate in accordance with its designated responsibilities in this project.

SECTION II: The Mayor and City Clerk are hereby authorized and directed to execute all appropriate agreements and contracts necessary to expedite the design and environmental review of this City project.

SECTION III: The City pledges its full support and hereby authorizes the Arkansas State Highway and Transportation Department to initiate action to implement this project.

PASSED AND APPROVED this

PASSED AND APPROVED this	day of November, 2019.
ATTEST:	Doug Sprouse, Mayor
Denise Pearce, City Clerk	
APPROVED AS TO FORM:	
Ernest B. Cate, City Attorney	

### AGREEMENT OF UNDERSTANDING

### BETWEEN

### THE CITY OF SPRINGDALE

#### AND

### THE ARKANSAS DEPARTMENT OF TRANSPORTATION

In Cooperation with the U. S. Department of Transportation Federal Highway Administration

### RELATIVE TO

Implementation of **Job 040809**, **Springdale Dean's Trail Ph. 3 (TAP-19) (S)** (hereinafter called the "Project") as an Arkansas Transportation Alternatives Program (TAP) project.

WHEREAS, funding in the Fixing America's Surface Transportation (FAST) Act includes 80% Federal-aid funds to be matched with 20% non-federal funds for approved TAP projects; and

WHEREAS, the City of Springdale (hereinafter called "Sponsor") has expressed its desire to use Federal-aid funds for the eligible Project and to provide necessary matching for such funds; and

WHEREAS, the Sponsor has transmitted to the Arkansas Department of Transportation (hereinafter called the "Department") a signed and sealed Resolution from the Sponsor's governing body authorizing the Sponsor's CEO or their designated representative to execute agreements and contracts with the Department for the Project; and

WHEREAS, funding participation will be as follows, subject to a limit of \$500,000 maximum Federal-aid approved for the Project:

	Maximum	Minimum
Project Design:	Federal %	Sponsor %
Right-of-Way/Utilities:	0	100
Project Construction:	0	100
Project Construction Inspection:	80	20
Department Administrative Cost (1% of Const. Amt.)	0	100
- 17 of Const. Amt.)	0	100

WHEREAS, the Sponsor understands that these funds have been awarded for specific project purposes, not for the Sponsor to utilize until expended; and

WHEREAS, the Sponsor knows of no legal impediments to the completion of the Project; and

WHEREAS, it is understood that the Sponsor and the Department will adhere to the General Requirements for Recipients and Sub-Recipients Concerning Disadvantaged Business Enterprises (DBEs) (Attachment A\*) and that, as part of these requirements, the Department may set goals for DBE participation in the Project ranging from 0% to 100% that are practical and related to the potential availability of DBEs in desired areas of expertise; and

WHEREAS, the Department has published the Arkansas Local Public Agency Project Manual (available at <a href="https://www.ardot.gov/LPA">www.ardot.gov/LPA</a>) which outlines procedures and requirements which must be followed during development and construction of the Project; and

WHEREAS, the parties agree, unless specifically stated otherwise, that the provisions of this agreement are not intended to created or confer a third party benefit or right in any person or entity, not a party to this agreement.

IT IS HEREBY AGREED that the Sponsor and the Department, in cooperation with the Federal Highway Administration, will participate in a cooperative program for implementation of the Project and will accept the responsibilities and assigned duties as described hereinafter.

### THE SPONSOR WILL:

- 1. Notify the Department in writing who the Sponsor designates as its full-time employee to be in responsible charge of the day to day oversight of the Project (Attachment B\*). The duties and functions of this person are:
  - Oversee project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
  - Maintains familiarity of day to day project operations, including project safety issues;
  - Makes or participates in decisions about changed conditions or scope changes that require change orders and/or supplemental agreements;
  - During construction, visits and reviews the project on a daily basis;
  - Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse;
  - Directs project staff, Sponsor or consultant, to carry out project administration and contract oversight, including proper documentation;
  - Be aware of the qualifications, assignments and on-the-job performance of the Sponsor and consultant staff at all stages of the project.
- 2. Sponsors that require a reduction or modification to the scope of their project will submit the Revision of Project Scope and Budget (Attachment C\*) with the signed Agreement of Understanding.
- 3. Prepare plans, specifications, and a cost estimate for construction. A registered professional engineer must sign the plans and specifications for the project if the project includes design of structural components. Plans which include the design of only non-infrastructure components will not require a registered stamp.
- 4. Be responsible for any necessary coordination with affected railroads including preliminary and final plan review and for executing any formal railroad maintenance and construction agreements that may be necessary for the project. This includes ensuring that potential bidders are aware of railroad coordination required during construction including flagging services and insurance.
- 5. Submit plans at 30%, 60%, and 90% completion stages for Department review.

6. Submit the following deliverables for the Project by the listed deadline or risk possible cancellation of the Federal-aid award or significant delay of the Project. If a deadline is missed, the Sponsor may be required to submit a reason for the delay and request a time extension in writing.

Deliverable	Deadline	
Signed Agreement of Understanding for Execution by the Department	60 Days from the Kick-off Meeting	
30% Complete Plans for Review	180 Days from the Kick-off Meeting	
60% Complete Plans for Review	90 Days from the return of Department comments on previous set of plans	
90% Complete Plans for Review	90 Days from the return of Department comments on previous set of plans	
Final Plans, Bid Documents, and Request for Authority to Advertise	90 Days from the return of Department comments on previous set of plans	

- 7. Complete the process for all permits that might be required for the project. This could include, but is not limited to, the US Army Corp of Engineers Section 404 permit; and the Arkansas Department of Environmental Quality's Section 401 Water Quality Certification, Short Term Activity Authorization, and National Pollutant Discharge Elimination System permit. The Section 404 permitting application(s) and/or determination information should be submitted with the plans to the Department in order to aid in the completion of the environmental documentation.
- 8. Provide any necessary higher levels of investigation for the required environmental document should the Project have uncertain or significant cultural, environmental or social impacts; have a likelihood of generating controversy; and/or possible economic impacts. For projects located on federal lands, the Sponsor must submit a <u>completed</u> environmental document for the Project, approved by the agency with authority over the federal lands.
- 9. Comply with provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, FHWA TAP Guidance, and any other Federal, State, and/or local laws, rules and/or regulations. (See Attachment D\* for items to be included in the bid proposal).
- 10. Before acquiring property or relocating utilities, contact the Department's Right of Way Division to obtain the procedures for acquiring right-of-way and adjusting utilities in conformance with federal regulations. NOTE: Failure to notify the Department prior to initiating these phases of work may result in <u>all project expenditures being declared non-participating in federal funds</u>.
- 11. Acquire property in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (commonly referred to as the "Uniform Act").
- 12. Provide a copy of the registered deed or other approved documentation and an appropriate certification stating the Sponsor's clear and unencumbered title to any right-of-way to be used for the Project and the land is accessible to the general public for recreational or transportation purposes (See Attachment E1\*). If property has been acquired for the Project, use Attachment E2\* for certification of the right-of-way.

- 13. Ensure the preparation of utility adjustment and right-of-way plans are in accordance with Arkansas State Highway Commission Policy.
- 14. Submit a certification letter (Attachment F\*), including all items noted, to the Department when requesting authority to advertise the Project for construction bids. In the event Federal funds are not available for the Project at the time of this request, the Department may delay approval until funds are available. If the Sponsor is determined to move forward with construction while Federal funds are not available, the Department may grant this authority with the understanding that the Sponsor will experience a delay in reimbursement of the Federal funds.
- 15. Advertise for bids in accordance with federal procedures as shown in Attachment G\*. NOTE: FHWA authorization and Department approval must be given prior to advertising for construction bids.
- 16. Forward a copy of all addenda to the Project during the advertisement to the Department.
- 17. After bids are opened and reviewed, submit a certification (Attachment H\*), including all items noted, to the Department and request concurrence in award of the contract.
- 18. Prior to issuing the notice to proceed to the Contractor, the Sponsor must hold a preconstruction meeting with the Contractor and must invite the Department's Resident Engineer assigned to the Project.
- 19. Prior to executing the work, submit change orders to the contract to the Department's Resident Engineer assigned to the Project for review and approval for program eligibility.
- 20. Construct the Project in accordance to plans and specifications that were developed by the Sponsor, or the Sponsor's representative, and were reviewed and approved by the Department prior to the issuance of the Notice to Proceed.
- 21. Perform construction inspection in accordance with Attachment I\*.
- 22. Make payments to the contractor for work accomplished in accordance with the plans and specifications and then request reimbursement from the Department on the Construction Certification and Reimbursement Request (CCRR) form (Attachment J\*). Requests for reimbursement must be made at least once every three (3) months that construction projects are active in order to avoid being put on the FHWA inactive project list.
- 23. Attach Report of Daily Work Performed (Attachment K\*) for all days that correspond with each CCRR submittal.
- 24. Upon project completion hold a final acceptance meeting for the Project and submit the Final Acceptance Report form certifying that the Project was accomplished in accordance with the plans and specifications (Attachment L\*). This form must be signed by the engineer performing construction inspection on the Project, the Department's Resident Engineer assigned to the project, the Sponsor's full-time employee in responsible charge, and the Sponsor's CEO.

- 25. Maintain accounting records to adequately support reimbursement with Federal-aid funds and be responsible for the inspection, measurement and documentation of pay items, and certification of all work in accordance with the plans and specifications for the Project and for monitoring the Contractor and subcontractor(s) for compliance with the provisions of FHWA-1273, Required Contract Provisions, Federal-aid Construction Contracts, and Supplements.
- 26. Pay all unpaid claims for all materials, labor, and supplies entered into contingent or incidental to the construction of said work or used in the course of said work including but not limited to materials, labor, and supplies described in and provided for in Act Nos. 65 and 368 of 1929, Act No. 82 of 1935, and Acts amendatory thereof.
- 27. Agree that any and all claims for damages to property or injury to persons caused by any act or omission, negligence, or misconduct from the performance of work by the Sponsor's contractor on the Project shall be the sole responsibility of the Sponsor's contractor and in this regard the Sponsor shall require the contractor on the Project to procure and maintain a General Public Liability Insurance Policy during the duration of the Project which shall be endorsed to include broad form general liability and complete operations coverage on the Project. The contractor shall furnish the Sponsor with documentation of proof of liability insurance coverage with submission of the signed contract.
- 28. Agree that any claims, liability, costs, expenses, demands, settlements, or judgments arising from misconduct or the negligent acts or omissions of the Sponsor, its employees, agents or contractors in the performance of the Project and this Agreement must be presented to the Sponsor. Further, the Sponsor by acceptance of this grant, agrees that the Department and the Arkansas State Highway Commission, as the pass-through entity, have no duty or responsibility for the design, construction, maintenance or operation of the Project that is the subject of this grant, and, therefore shall have no liability related to the design, construction, maintenance or operation of the Project. The Sponsor also agrees to assume all risks associated with the work to be performed by its agents, employees, and contractors under this grant and Agreement and the Department and the Arkansas State Highway Commission, as the pass-through entity, shall not be responsible or liable for any damages whatsoever from the actions of the Sponsor, its employees, agents and contractors.
- 29. Assure that its policies and practices with regard to its employees, any part of whose compensation is reimbursed from federal funds, will be without regard to race, color, religion, sex, national origin, age, or disability in compliance with the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, The Americans with Disabilities Act of 1990, as amended, and Title 49 of the Code of Federal Regulations Part 21 (49 CFR 21), Nondiscrimination in Federally-Assisted Programs of the Department of Transportation.
- 30. Retain all records relating to inspection and certification, the Contractor's billing statements, and any other files necessary to document the performance and completion of the work in accordance with requirements of 49 CFR 18.42 Retention and access requirements for records (Attachment M\*).
- 31. Grant the right of access to Sponsor's records pertinent to this Project and the right to audit by the Department and Federal Highway Administration officials.

- 32. Be responsible for its portion of the total project cost and 1% of the contract amount for Department administration costs. The funds to be submitted for Department administrative costs shall have a maximum value equaling 1% of the TAP award plus the required non-federal match.
- 33. Be responsible for 100% of all project costs incurred should the Project not be completed as specified.
- 34. Be responsible for 100% of any and all expenditures for which federal funds do not participate or that are not approved for federal funds.
- 35. Sign and transmit to the Department the Certification for Grants, Loans, and Cooperative Agreements (Attachment N\*), which is necessary for Project participation.
- 36. Repay to the Department the federal share of the cost of any portion of this Project if, for any reason, federal participation is removed due to actions or inactions of the Sponsor, its agents, its employees, or its assigns or the Sponsor's consultants or contractors or their agents. Such actions or inactions shall include, but are not limited to, federal non-participation arising from problems with design plans, specifications, construction, change orders, construction inspection, or contractor payment procedures. The Sponsor understands and agrees that the Department may cause necessary funds to be withheld from the Sponsor's Motor Fuel Tax allotment should the Sponsor fail to pay to the Department any required funds, fail to complete the Project as specified, or fail to adequately maintain or operate the Project.
- 37. Repay all federal funds if this is determined necessary for any reason.
- 38. Retain total, direct control over the Project throughout the life of the improvements and not, without prior approval from the Department:
  - sell, transfer, or otherwise abandon any portion of the Project;
  - change the intended use of the Project as approved;
  - make significant alterations to any improvements constructed with Federal-aid funds; or
  - cease maintenance or operation of a project due to the Project's obsolescence.
- 39. Be responsible for satisfactory maintenance and operation of all improvements and for adopting regulations and ordinances as necessary to ensure this. Failure to adequately maintain and operate the Project in accordance with Federal-aid requirements may result in the Sponsor's repayment of Federal funds and may result in the withholding of all future Federal-aid funds.
- 40. Submit to the Department a Single Audit in accordance with the Office of Management and Budget (OMB) Circular A-133 each fiscal year that the Sponsor expends more than \$500,000 of Federal-aid from any federal source including, but not limited to, the U.S. Department of Transportation. The fiscal year used for the reporting is based on the Sponsor's fiscal year. The \$500,000 threshold is subject to change after OMB periodic reviews.
- 41. Promptly notify the Department if the Project is rendered unfit for continued use by natural disaster or other cause.
- 42. Complete and transmit to the Department both pages of the Federal Funding Accountability and Transparency Act (FFATA) Reporting Requirements (Attachment O\*).

### THE DEPARTMENT WILL:

- 1. Maintain an administrative file for the Project and be responsible for administering Federal-aid funds.
- 2. Request review from the Arkansas Historic Preservation Program (AHPP).
- 3. Provide routine environmental documentation for the Project.
- 4. Notify the Sponsor when right-of-way and/or utility plans are approved and the Sponsor may proceed with right-of-way acquisition and/or utility adjustments.
- 5. Upon receipt of the Sponsor's certification of right-of-way (property) ownership, provide the appropriate documentation to the file.
- 6. Review plans and specifications for project/program eligibility.
- 7. Ensure substantial compliance with federal contracting requirements through review of the bidding proposal for inclusion of required federal forms, review of the administration of the DBE program provisions, and general compliance with 23 CFR 635.
- 8. Advise the Sponsor when to proceed with advertisement of the Project for construction bids.
- 9. Review bid tabulations and concur in award of the construction contract for the Project.
- 10. Participate in the Sponsor's preconstruction and final acceptance meetings.
- 11. Visually verify (insofar as is reasonably possible) that the work meets contract requirements before reimbursement is made to the Sponsor.
- 12. Review and approve any necessary change orders for project/program eligibility.
- 13. Reimburse the Sponsor 80% (Federal-aid share) for eligible costs up to the maximum Federal-aid amount as approved in the CCRR form (Attachment J\*). This reimbursement will be limited to the maximum Federal-aid amount and to the federal amount available at the time payment is requested. If the payment requested exceeds the Federal-aid available at the time, the difference will be reimbursed as additional Federal-aid for the Project becomes available.
- 14. Subject to the availability of Federal-aid allocated for the Project, pay the Sponsor the remaining amount due upon completion of the Project and submittal of the certified Final Acceptance Report form (Attachment L\*).
- 15. Reserve the right to cancel the Project if there is an unreasonable delay in project development or completion of the project, there is a lack of progression toward project development or completion of the project, the Sponsor is unable to provide an audit-worthy reason for the substantial delay in the project development or completion process or the Sponsor is unresponsive to Department requests.

Agreement of Understanding Between the City of Springdale and the Arkansas Department of Transportation

IT IS FURTHER AGREED that should the Sponsor fail to fulfill its responsibilities and assigned duties as related in this Agreement, such failure may disqualify the Sponsor from receiving all future Federal-aid funds administered by the Department.

IT IS FURTHER AGREED that should the Sponsor fail to pay to the Department any required funds due for implementation of the Project or fail to complete the Project as specified in this Agreement, or fail to adequately maintain or operate the Project, the Department may cause such funds as may be required to be withheld from the Sponsor's Motor Fuel Tax allotment.

IN WITNESS WHEREOF, the parties thereto have day of	executed this Agreement on this
ARKANSAS DEPARTMENT OF	CITY OF SPRINGDALE
TRANSPORTATION	*
Scott E. Bennett, P.E. Director	Doug Sprouse Mayor of Springdale
	Ernest Cate Attorney

\*All Attachments referenced in this Agreement are available in digital format on the Department's LPA webpage at: <a href="www.ardot.gov/LPA">www.ardot.gov/LPA</a>.

# ARKANSAS DEPARTMENT OF TRANSPORTATION NOTICE OF NONDISCRIMINATION

The Arkansas Department of Transportation (Department) complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in programs and activities receiving federal financial assistance. Therefore, the Department does not discriminate on the basis of race, sex, color, age, national origin, religion (not applicable as a protected group under the Federal Motor Carrier Safety Administration Title VI Program), disability, Limited English Proficiency (LEP), or low-income status in the admission, access to and treatment in the Department's programs and activities, as well as the Department's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Department's nondiscrimination policies may be directed to Joanna P. McFadden Section Head - EEO/DBE (ADA/504/Title VI Coordinator), P. O. Box 2261, Little Rock, AR 72203, (501) 569-2298, (Voice/TTY 711), or the following email address: ioanna.mefadden@ardot.gov

Free language assistance for Limited English Proficient individuals is available upon request.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

ORDINANCE NO.

AN ORDINANCE AUTHORIZING THE CITY CLERK TO FILE A CLEAN-UP LIEN FOR THE REMOVAL OF OVERGROWN BRUSH AND DEBRIS ON PROPERTY LOCATED WITHIN THE CITY OF SPRINGDALE, ARKANSAS.

WHEREAS, the following real property located in Springdale, Washington County, Arkansas, is owned as set out below:

> PROPERTY OWNER: Pedro Wilber Flores

LEGAL DESCRIPTION: Lot 5, Block 3, Neff Subdivision, Phase One, to the City of Springdale, Arkansas, as shown in Plat Book 3 at page 484, plat records of Washington County,

Arkansas.

LAYMAN'S DESCRIPTION: 2507 Toni

Springdale, Washington County, Arkansas

PARCEL NO.: 815-23735-000

WHEREAS, the owner was given notice, pursuant to Ark. Code Ann. §14-54-903, of the unsightly and unsanitary conditions on the properties described above, and instructed to clean the properties in accordance with Sections 42-77 and 42-78 of the Springdale Code of Ordinances;

WHEREAS, the property owner of record did not abate the situation on these properties, and as a result, the City of Springdale was required to abate the conditions on these properties and incurred cost as follows, and as shown in the attached Exhibits:

\$376.16 clean-up costs and \$28.90 administrative costs – 2507 Toni (Parcel No. 815-23735-000)

WHEREAS, the property owners have been given at least 30 days written notice of the public hearing in accordance with Ark. Code Ann. §14-54-903, as shown in the attached Exhibits;

WHEREAS, Ark. Code Ann. §14-54-904 authorizes the City Council to assert a clean-up lien on these properties to collect the amounts expended by the City in cleaning up these properties;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, pursuant to Ark. Code Ann. §14-54-904, the City Council certifies that the following real property shall be placed on the tax books of the Washington County Tax Collector as delinquent taxes and collected accordingly:

\$405.06, plus 10% for collection - 2507 Toni (Parcel No.815-23735-000)

Emergency Clause. It is hereby declared that an emergency exists and this ordinance, being necessary for the preservation of the health, safety and welfare of the citizens of Springdale, Arkansas, shall be in effect immediately upon its passage and approval.

PASSED AND APPROVED this \_\_\_\_\_ day of November, 2019.

Doug Sprouse, Mayor

Ernest B. Cate, CITY ATTORNEY

Denise Pearce, CITY CLERK

APPROVED AS TO FORM:

ATTEST:



Ernest B. Cate City Attorney ecate@springdalear.gov

Taylor Samples
Senior Deputy
City Attorney
Isamples@springdalear.gov

Sarah Sparkman Deputy City Attorney ssparkman@springdalear.gov

David D. Phillips Deputy City Attorney dphillips@springdalear.gov

Lynda Belvedresi Case Coordinator/ Victim Advocate Ibelvedresi@springdalear.gov

Steve Helms Investigator shelms@springdalear.gov

Cindy Horlick Administrative Legal Assistant/Paralegal chorlick@springdalear.gov

Jacque Roth Docket Coordinator/ Discovery Clerk jroth@springdalear.gov

## Office Of The City Attorney

7 201 Spring Street Springdale, Arkansas 72764 Phone (479) 756-5900 Fax (479) 750-4732 www.springdalear.gov

September 30, 2019

CERTIFIED MAIL RETURN RECEIPT REQUESTED AND REGULAR MAIL

Pedro Wilber Flores 3505 Birchwood Ave. Springdale, AR 72762

## CERTIFIED MAIL RETURN RECEIPT REQUESTED

The Corporation Company d.b.a. CT Corporation Registered Agent for BOKF, NA 124 West Capitol Ave., Suite 1900 Little Rock, AR 72201

> RE: Notice of clean-up lien on property located at 2507 Toni, Springdale, Washington County, Arkansas, Tax Parcel No. 815-23735-000

Dear Property Owner/Lienholder:

On July 23,2019, notice was posted on property located at 2507 Toni, Springdale, Arkansas, that the property was in violation of Springdale City Ordinance 42-77 and 42-78, and needed to be remedied within seven (7) days. Notice was mailed to the owner of record on July 23, 2019, that the City intended to seek a clean-up lien on this property pursuant to Ark. Code Ann. §14-54-903 if the violations were not remedied. The notice also applied to any violations that may be found on the property within the next 12 months.

Subsequent to the above-referenced violation notice being issued, a city code violation was found to have existed on the property. As a result, the City of Springdale took action to remedy the violations on the property, as is allowed by Ark. Code Ann. §14-54-903, on or about August 14, 2019. As of this date, the total costs incurred by the City of Springdale to clean this property are \$376.16. I have enclosed an invoice evidencing the abatement costs incurred and paid by the City of Springdale to clean this property. Also, in accordance with Ark. Code Ann. §14-54-903(c)(4), administrative fees may be added to the total costs incurred by the City of Springdale, which will include certified mailing fee in the amount of \$6.95 per letter and a filing fee in the amount of \$15.00 to the Washington County Circuit Court.

This is to notify you that in the event this amount is not paid to the City of Springdale on or before November 12, 2019, a hearing confirming the amount of the lien will be held before the Springdale City Council pursuant to Ark. Code Ann. §14-54-903 to determine the amount of the clean-up lien to which the City is entitled for cleaning up the property. The hearing confirming the amount of the lien will be held Tuesday, November 12, 2019, at 6:00 p.m. in the City Council Chambers at the City Administration Building, 201 Spring Street, Springdale, Arkansas. If this amount is paid prior to the hearing, no lien will be pursued.

Please remit the total sum of \$390.06, which includes \$376.16 for cleaning up the property and \$13.90 for certified mailings to the City of Springdale by the date listed above. Payment must be made payable to the City of Springdale and presented to the attention of Cindy Horlick, Springdale City Attorney's Office, 201 Spring Street, Springdale, AR 72764. If you fail to pay this amount before the hearing, then an additional \$15.00 will be added for the costs of filing the ordinance with the Circuit Clerk's Office.

If you desire to contest the amount sought above, you will need to contact Neighborhood Services Division at 479-756-7712 for an appointment and you will be given a court date in Springdale District Court where you will have the opportunity to state your case before the District Court Judge.

This letter is also being mailed by regular mail to Pedro Wilber Flores at the address above. Delivery of that letter by the U.S. Postal Service shall warrant service should the certified letter be returned.

If you should have any questions, please let me know.

1/1/11

Sarah Sparkman Deputy City Attorney

enclosures ss:ch City of Springdale

Neighborhood Services Division

210 Spring St

Springdale AR 72764

Phone 479-756-7712 SPRINGDALE

CITY ABATEMENT-2019 - Wednesday, August 14, 2019 12:46:57 PM (LOGAN-CODE 2)

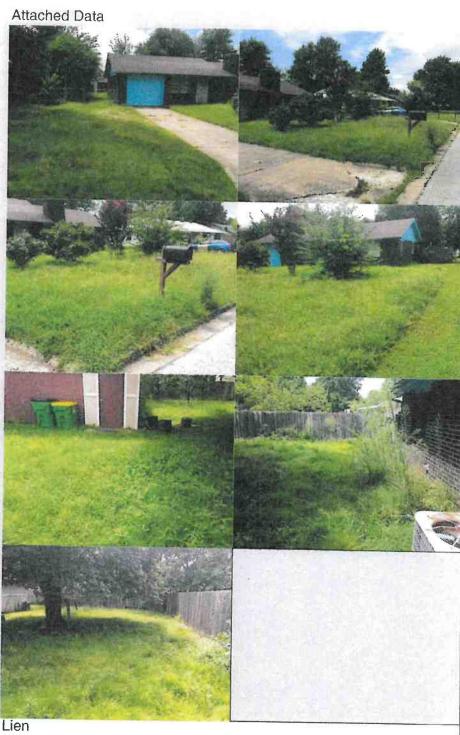
User Name LOGAN-CODE 2

User# 4792831304

Form Started 8/14/2019 12:46:57 PM 8/14/2019 1:41:58 PM

Property Address 2507 Toni

Before Picture



Type of Abatement Date of Abatement Officer on Site-

Labor Rate Recovery

Employee

HH Benefit Rate

Method of Compliance

1 Method of Compilance Mowing Equipment Used

Wednesday, August 14, 2019 12:46:00 PM L. West

Henry Hernandez \$54.84

Equipment 754 Grasshopper ,743 Kubota,6037 Service Pick Up Truck 754 Grasshopper \$55.00 743 Kubota \$65.00 6037 Service Pick Up Truck \$35.00 Time of Abatement in 1 Hours Number of Temporary 2 Laborers Temporary Labor Rate 48.00 Recovery Employee labor recovery 54.84 per hour Total Employee Cost 54.84 Equipment Cost per hour 155.00 Total Egupment Cost 155.00 Disposal Cost Recovery \$118.32 Number of Tires Removed 0 (\$2 Each) Number of Electronics 0 Removed (\$10 Each) Containers of Chemicals 0 (\$1 Each) Freon Removal Recovery (\$20 each) Total Cost of Abatement 376.16 At the property of 2507 Toni, the landscape crew removed tall grass Items Removed from Property and weeds. Final Photos Attached Data



,		
SENDER: COMPLETE THIS SECTION  Complete items 1, 2, and 3.  Print your name and address on the reverse so that we can return the card to you.  Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature  X. Divince   A. Signature  X. Divince   A. Signature  B. Received by (Printed Name,  D. Is delivery address different if YES, enter delivery address	Agent Addressee  C. Date of Delivery
Pedro Wilber Flores 3505 Birchwood Ave. Springdale, AR 72762  9590 9402 5215 9122 2176 41  2. Article Number (Transfer from service label) 7019 1120 0000 5548	3. Service Type  Adult Signature Adult Signature Restricted Delivery  Certified Mail Restricted Delivery  Collect on Delivery  Collect on Delivery  (over 3500)  4ed Delivery	☐ Priority Mall Express® ☐ Registered Mall™ ☐ Registered Mall Restricted Delivery ☐ February ☐ Receipt for ☐ Signature Confirmation ☐ Restricted Delivery
PS Form 3811, July 2015 PSN 7530-02-000-9053  SENDER: COMPLETE THIS SECTION  Complete items 1, 2, and 3.  Print your name and address on the reverse so that we can return the card to you.	COMPLETE THIS SECTION OF A. Signature	Domestic Return Receipt  **DELIVERY**  **DAgent**  **Addressee**
Attach this card to the back of the mailpiece, or on the front if space permits.  1. Article Addressed to:  The Corporation Company d.b.a. CT Corporate Registered Agent for BOKF, NA 124 West Capitol Ave., Suite 1900 Little Rock, AR 72201	B. Received by (Printed Name)  (1) (1) 2019  D. Is delivery address different from If YES, enter delivery address	C. Date of Delivery
9590 9402 5215 9122 2176 34  2 Article Number (Transfer from sequine Iriba) 7019 1120 0000 5848 584	3. Service Type  Adult Signature  Adult Signature Restricted Delivery  Certified Meil®  Certified Meil®  Collect on Delivery  Collect on Delivery  ill Restricted Delivery	☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Dailvery Peturn Receipt for Merchandise ☐ Signature Confirmation IIII Signature Confirmation Restricted Delivery
PS Form 3811, July 2015 PSN 7530-02-000-9053	ו וייים שטיין	